

RESOLUTION NO. 2009-395

SPONSOR Mr. Kostandaras

DATE November 2, 2009

COMMITTEE: Planning

A Resolution adjusting the boundaries of the City of Barberton and the City of Norton pursuant to the mutual agreement of the municipalities whereby 15.9879 acres of land is being transferred from the City of Norton to the City of Barberton, as set forth in Section 709.37 of the Ohio Revised Code, for the County of Summit Council, and declaring an emergency.

WHEREAS, Section 709.37 of the Ohio Revised Code allows municipalities, by mutual agreement, to adjust the boundaries between the municipalities and provides that the Board of County Commissions must then approve, by resolution, the change of boundary; and

WHEREAS, the City of Norton and the City of Barberton have mutually agreed, as evidenced in the resolutions attached hereto as Exhibits A and B, to adjust the boundaries between the two municipalities by transferring 15.9878 acres from the City of Norton to the City of Barberton; and

WHEREAS, in accordance with said resolutions, and Section 709.37 of the Ohio Revised Code, this Council finds and determines that it is now necessary to approve the boundary adjustment between the City of Norton and the City of Barberton.

NOW, THEREFORE, BE IT RESOLVED by the Council of the County of Summit, State of Ohio, that:

SECTION 1

The boundary adjustment that has been mutually agreed upon by the City of Barberton and the City of Norton, as evidenced by the resolutions attached hereto as Exhibit A and B, whereby the City of Norton has transferred 15.9878 acres of land to the City of Barberton is hereby approved and the lines of these two municipalities shall conform to the boundaries set forth in said resolutions and the exhibits thereto.

SECTION 2

The Clerk of Council is hereby directed to send a certified copy of this Resolution and the attached Exhibits to the Ohio Secretary of State, County Fiscal Officer- Recording Department, the County Engineer and the Summit County Board of Elections.

SECTION 3

This Resolution is hereby declared an emergency in the interest of the health, safety and welfare of the citizens of the County of Summit and for the further reason to immediately adjust the boundaries as set forth in Section 709.37 of the Ohio Revised Code.

RESOLUTION NO. 2009-395

PAGE TWO

SECTION 4

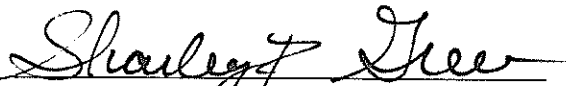
Provided this Resolution receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise it shall take effect and be in force at the earliest time provided by law.


SECTION 5

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action,

INTRODUCED October 19, 2009

ADOPTED November 2, 2009


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

APPROVED November 2, 2009


EXECUTIVE

ENACTED EFFECTIVE November 2, 2009

VOICE VOTE: 10-1 YES: Comunale, Crossland, Feeman, Kostandaras, Poda, Prentice, Rodgers, Schmidt, Shapiro, Smith NO: Crawford

LOM:sem
09-09-09

Presented by: Mr. Subotic

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RECORDED
COUNTY OF SUMMIT
CLERK

ORDINANCE NO. 141-2009

TITLE: BOUNDARY ADJUSTMENT
CITY OF BARBERTON / CITY OF NORTON

AN ORDINANCE DETERMINING TO CHANGE THE BOUNDARY LINE SEPARATING THE CITY OF BARBERTON AND THE CITY OF NORTON BY MUTUAL AGREEMENT OF THE CITY OF BARBERTON AND THE CITY OF NORTON, PURSUANT TO SECTION 709.37 OF THE REVISED CODE.

WHEREAS, pursuant to Section 709.37 of the Revised Code, two adjoining municipal corporations, by ordinance of their respective legislative authorities, may agree to change the boundary line separating the two municipal corporations so long as such change does not involve the transfer of territory, inhabited by more than five voters, from one municipal corporation to the other; and

WHEREAS, the City of Barberton, Ohio has requested the City of Norton, Ohio to agree to a change in the boundary line separating the City of Norton and the City of Barberton by transferring certain property currently located in the City of Norton and described on **Exhibit A attached** hereto and incorporated herein by reference (the "Property") to the City of Barberton by mutual agreement; and

WHEREAS, the City of Barberton has requested the transfer of the Property to allow it to assist the Barberton City School District by providing land needed by the Barberton City School District to construct a new school building; and

WHEREAS, the Property is not territory of the City of Norton that is inhabited by more than five voters of the City of Norton; and

WHEREAS, the Council of the City of Norton passed an ordinance (Ordinance No. 80-2009) on August 24, 2009, agreeing to change the boundary line separating the City of Norton and the City of Barberton as described above; and

WHEREAS, this Council has determined to agree with the City of Norton to change the boundary line separating the City of Norton and the City of Barberton by transferring the Property to the City of Barberton.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, State of Ohio, that:

SECTION 1. This Council hereby agrees to change the boundary line separating the City of Barberton and the City of Norton by transferring the Property to the City of Barberton.

SECTION 2. The Mayor, or his designee, is hereby authorized and directed to take any and all such actions as shall be necessary to accept the transfer of the Property from the City of Norton to the City of Barberton, including, but not limited to, the filing of any deeds, easements, releases or any other necessary agreements.

SECTION 3. The Clerk of Council is hereby authorized and directed to certify a copy of this Ordinance to the Clerk of the Summit County Council.

SECTION 4. This Council hereby requests Summit County Council, upon receipt of this Ordinance and the Norton Ordinance, such ordinances constituting the Agreement between the City of Barberton and the City of Norton, to approve the boundary change caused by the transfer of Property and to make such adjustments as it deems necessary in accordance with Section 709.37 of the Revised Code.

SECTION 5. This Council further requests the Clerk of Summit County Council to file certified copies of this Ordinance, the Norton Ordinance, and the resolution of Summit County Council approving the boundary change (collectively, the "Transcript") in the office of the Secretary of State and to record and file the Transcript in the office of the Summit County Fiscal Officer. The City of Barberton and the City of Norton have agreed that all fees and costs of filing and recording the Transcript shall be paid by the City of Barberton.

SECTION 6. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 7. This ordinance shall be in full force and effect from and after the earliest period allowed by law.

Passed October 12, 2009

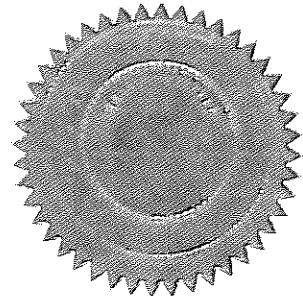
Susan Matuch
Clerk of Council

Fredrick A. Maurer
President of Council

Approved October 13, 2009

Robert J. Hensel
Mayor

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 141-2009 as taken from the records on file in the office of the Council of the City of Barberton.
Susan Matuch
Clerk of Council



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COUNCIL
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ROBERT C. WINEBRENNER & ASSOCIATES
Consulting Engineers & Surveyors
1050 N. MAIN ST. • AKRON, OHIO 44310 • (330) 928-9087

09 - 395
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RECORDED
COUNTY OF SUMMIT
COUNCIL

AUGUST 21, 2009
LEGAL DESCRIPTION FOR CITY OF BARBERTON,
ANNEXATION OF 15.9879 AC FROM THE CITY OF NORTON

Situated in the City of Norton, County of Summit, and State of Ohio, and known as being part of Original Lot 66, formerly Norton Township, and more fully described as follows;

Beginning at the centerline intersection of 27th St. N.W. & Shannon Ave. In the City of Barberton.

Thence N.04°41'15"E., a distance of 180.00 feet to a point on the South Corporation line of the City of Norton, at the true place of beginning of the property to be annexed;

Thence N.04°41'15"E., a distance of 682.23 feet to a point on the North line of Original Lot 66;

Thence S.86°12'07"E., along the North line of O.L. 66, a distance of 330.06 feet to a point;

Thence S.86°41'13"E., along the North line of Original Lot 66, a distance of 560.97 feet to a point;

Thence S.04°14'36"W., a distance of 273.80 feet to a point;

Thence S.81°10'02"E., a distance of 376.17 feet to a point;

Thence S.29°08'57"E., a distance of 14.50 feet to a point;

Thence N.81°36'33"E., a distance of 27.79 feet to a point;

Thence S.05°23'26"W., a distance of 25.22 feet to a point on the Northwesterly right of way line of Hillsdale Ave.;

Thence S.43°19'21"W., along said right of way line, a distance of 46.58 feet to a point;

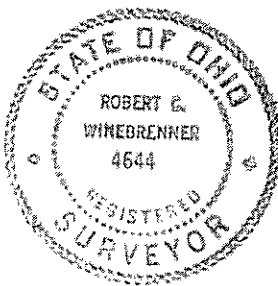
Thence S.58°47'36"W., along said right of way line, a distance of 481.91 feet to a point;

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Thence S.50°22'00"W., along said right of way line, a distance of 62.38 feet to a point on the South Corporation line of the City of Norton;

Thence N.85°44'45"W., along said Corporation line a distance of 838.89 feet to the true place of beginning and containing 15.9879 acres of land as calculated in August 2009, by Robert C. Winebrenner, Registered Surveyor No. 4644.

Bearings are based on holding the bearing of Hillsdale Ave. as S.58°47'36"W. as given in Deed Reception No. 54086584.

 *Robert C. Winebrenner*
Robert C. Winebrenner
Registered Surveyor No. 4644

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SPONSORED BY: Rick Ryland, Admin. Officer
REFERRED TO: Committee Work Session
INTRODUCED BY: Ken Braman, Planning Chair

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EXHIBIT B

CITY OF NORTON
ORDINANCE NO. 80-2009

AN ORDINANCE DETERMINING TO CHANGE THE BOUNDARY LINE SEPARATING THE CITY OF NORTON AND THE CITY OF BARBERTON BY MUTUAL AGREEMENT OF THE CITY OF NORTON AND THE CITY BARBERTON PURSUANT TO SECTION 709.37 OF THE REVISED CODE, AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Section 709.37 of the Revised Code, two adjoining municipal corporations, by ordinance of their respective legislative authorities, may agree to change the boundary line separating the two municipal corporations so long as such change does not involve the transfer of territory, inhabited by more than five voters, from one municipal corporation to the other; and

WHEREAS, the City of Barberton, Ohio has requested the City of Norton, Ohio (the "City") to agree to a change in the boundary line separating the City of Barberton and the City by transferring certain property currently located in the City and described on Exhibit A attached hereto and incorporated herein by reference (the "Property") to the City of Barberton by mutual agreement; and

WHEREAS, the City of Barberton has requested the transfer of the Property to allow it to assist the Barberton City School District by providing land needed by the Barberton City School District to construct a new school building; and

WHEREAS, the Property is not territory of the City that is inhabited than more than five voters of the City; and

WHEREAS, the Council of the City of Barberton has passed an ordinance (the "Barberton Ordinance") agreeing to change the boundary line separating the City and the City of Barberton as described above; and

WHEREAS, this Council has determined to agree with the City of Barberton to change the boundary line separating the City and the City of Barberton by transferring the Property to the City of Barberton.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Norton, Summit and Wayne Counties, State of Ohio, that:

Attest: Karla Richards
Karla Richards, CMC- Clerk of Council

David L. Koontz
David L. Koontz, Mayor

Date approved by the Mayor 8/29/09

I, Karla Richards, CMC-Clerk of Council for the City of Norton, Summit and Wayne Counties, Ohio do hereby certify that the foregoing Ordinance No. 80-2009 was duly and regularly passed by the Council of the City of Norton, Summit County, Ohio at a meeting held on August 24, 2009.

Karla Richards
Karla Richards, CMC-Clerk of Council

That this legislation was posted according to law on September 4th, 2009 and will become effective on September 27, 2009.

Prepared and approved as to legal form by Peter M. Kostoff, Law Director, City of Norton, August 19, 2009.

I hereby certify that the foregoing is a true and accurate copy of Ord. # 80-2009 as taken from the records on file in the office of the Norton City Council.

8-31-09 Karla Richards
Date Karla Richards - Clerk of Council

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ROBERT C. WINEBRENNER & ASSOCIATES
Consulting Engineers & Surveyors
1050 N. MAIN ST. ° AKRON, OHIO 44310 ° (330) 928-9087

AUGUST 21, 2009
LEGAL DESCRIPTION FOR CITY OF BARBERTON,
ANNEXATION OF 15.9879 AC FROM THE CITY OF NORTON

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Situated in the City of Norton, County of Summit, and State of Ohio, and known as being part of Original Lot 66, formerly Norton Township, and more fully described as follows;

Beginning at the centerline intersection of 27th St. N.W. & Shannon Ave. In the City of Barberton.

Thence N.04°41'15"E., a distance of 180.00 feet to a point on the South Corporation line of the City of Norton, at the true place of beginning of the property to be annexed;

Thence N.04°41'15"E., a distance of 682.23 feet to a point on the North line of Original Lot 66;

Thence S.86°12'07"E., along the North line of O.L. 66, a distance of 330.06 feet to a point;

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Thence N.81°36'33"E., a distance of 27.79 feet to a point;

Thence S.05°23'26"W., a distance of 25.22 feet to a point on the Northwesterly right of way line of Hillsdale Ave.;

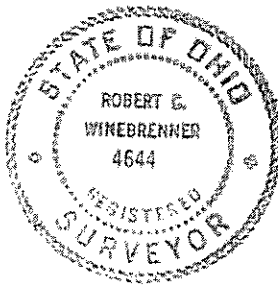
Thence S.43°19'21"W., along said right of way line, a distance of 46.58 feet to a point;

Thence S.58°47'36"W., along said right of way line, a distance of 481.91 feet to a point;

Thence S.50°22'00"W., along said right of way line, a distance of 62.38 feet to a point on the South Corporation line of the City of Norton;

Thence N.85°44'45"W., along said Corporation line a distance of 838.89 feet to the true place of beginning and containing 15.9879 acres of land as calculated in August 2009, by Robert C. Winebrenner, Registered Surveyor No. 4644.

Bearings are based on holding the bearing of Hillsdale Ave. as S.58°47'36"W. as given in Deed Reception No. 54086584.



Robert C. Winebrenner

Robert C. Winebrenner
Registered Surveyor No. 4644

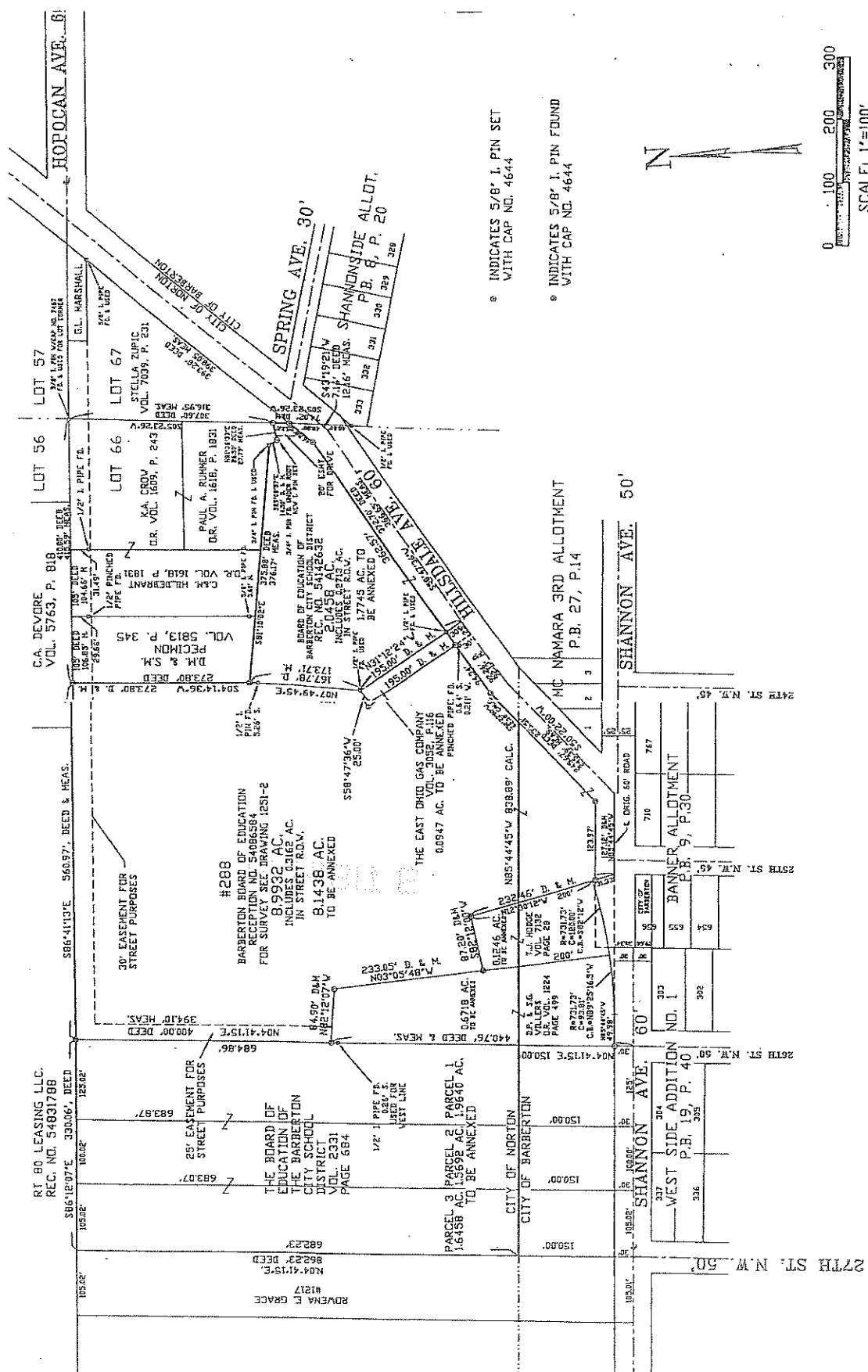
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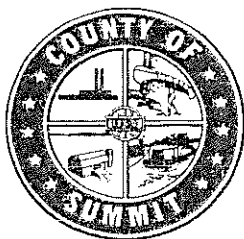
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TOTAL AREA TO BE ANNEXED 15.9879 AC.
 PART OF ORIGINAL LOT 66
 FORMERLY NORTON TOWNSHIP
 CITY OF NORTON
 SUMMIT COUNTY, OHIO

BEARING REFERENCE
 BEARINGS ARE BASED ON HOLDING
 THE BEARING OF HILLSDALE AVE.
 AS S88°47'36"W AS GIVEN IN
 DEED RECEPTION NO. 54086584



SHERRI BEVAN WALSH
Summit County Prosecuting Attorney

53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

October 30, 2009

Prosecutor Opinion Number 09-107

MARY ANN KOVACH
Chief Counsel

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COMMUNICATIONS
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ENFORCEMENT AGENCY**
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(330) 643-2745 Fax

JUVENILE DIVISION
650 Dan Street
Akron, OH 44310-3989
(330) 643-2943
(330) 379-3647 Fax

TAX DIVISION
220 S. Balch Street
Suite 118
Akron, OH 44302
(330) 643-2617
(330) 643-8540 Fax

Tim Crawford, Council Member
Summit County Council
175 South Main Street, 7th Floor
Akron, Ohio 44308

09 - 395

Re: Boundary Adjustment between the City of Norton and the City of Barberton

Syllabus: 1) Summit County Council must approve the boundary adjustment as mutually agreed upon by the City of Norton and the City of Barberton.

2) Section 1.02 of the City of Norton's Charter is invalid and a majority vote of the electors of the city is not required to approve the transfer of land.

Dear Mr. Crawford:

We are in receipt of your letter requesting a legal opinion about the transfer of land from the City of Norton to the City of Barberton. By mutual agreement, the City of Norton will transfer 15.98 acres of land to the City of Barberton. Both cities, through their respective legislative councils, have passed resolutions approving the transfer. However, according to Section 1.02 of the City of Norton's municipal charter, a majority vote of the electors of the city is required for territory to be "detached" from the City of Norton. You have asked whether 1) Summit County Council must approve the transfer of land from the City of Norton to the City of Barberton and 2) whether Section 1.02 of the City of Norton's municipal charter is valid thereby requiring a majority vote before the transfer can be approved and the boundary adjusted.

With respect to your first inquiry, Summit County Council must approve the transfer. Pursuant to R.C. § 709.37, any two adjoining municipalities may mutually agree to adjust the boundaries between them, provided the change does not involve the transfer of land inhabited by five or more voters. After both municipalities have approved the change, the board of commissioners of the respective county must then approve the change. R.C. § 709.37. Transcripts of the ordinances, agreement, and resolution certified by the board shall be filed in the office of the secretary of state and shall also be filed and recorded in the office of the county recorder. *Id.* Therefore, before the transfer can be completed, the Summit County Council must pass a resolution to approve the transfer and adjust the boundaries.

With respect to your second inquiry, Section 1.02 of the City of Norton's municipal charter is invalid and therefore a majority vote of the electors of the city is not required to approve the transfer. The City of Norton has adopted a charter form of government and enjoys "Home Rule Authority" over all matters local to the municipality. A home-rule analysis presents a three-step process. *Ohioans for Concealed Carry, Inc. v. Clyde* (2008), 120 Ohio St.3d 96, ¶ 24. "The first step is to determine whether the ordinance at issue involves an exercise of local self-government or an exercise of local police power." *Id.* (internal quotation marks omitted). "If the ordinance is one relating solely to matters of self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction." *Id.* The second step is to determine whether the General Assembly has enacted a general law covering the matter. *Ohioans for Concealed Carry, Inc.*, 120 Ohio St.3d at ¶ 25. The final step is to determine whether there is a conflict between the local ordinance and the state statute. *Ohioans for Concealed Carry, Inc.*, 120 Ohio St.3d at ¶ 26. If the two conflict, then the local ordinance must give way to the state statute. *Id.* at ¶ 25.

The Ohio Supreme Court has already held that annexation procedures are not a subject which falls within the sphere of local home rule authority. *Village of Beachwood v. Board of Elections of Cuyahoga County* (1958), 167 Ohio St. 369, 371-72. Annexation procedures must be uniform throughout the state and are exclusively within the control of the General Assembly. *Id.*; *In re Annexation of 118.7 Acres in Miami Twp. to City of Moraine* (1990), 52 Ohio St.3d 124, 129. Therefore, the City of Norton cannot impose additional requirements for annexation that are not provided for in the Revised Code. Section 1.02 of the City of Norton's Charter is invalid and a majority vote of the electors of the city is not required to approve the transfer of land.

It is the opinion of this office and you are so advised that the Summit County Council must approve the transfer of land between the Cities of Norton and Barberton. Additionally, Section 1.02 of the City of Norton's Charter is invalid and a majority vote of the electors of the city is not required to approve the transfer.

We trust that this answers your inquiry and should you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

SHERRI BEVAN WALSH
Prosecuting Attorney


ANITA L. DAVIS
Assistant Prosecuting Attorney

APPROVED:

MARY ANN KOVACH
Chief Counsel