



# City of Napoleon – Law Department

255 W. Riverview Avenue, PO Box 151, Napoleon, OH 43545

Phone: 419-592-3503 - Fax: 419-592-4723

COPY

City Law Director  
David M. Grahn  
dgrahn@napoleonohio.com

Administrative Assistant  
Sheryl K. Rathge  
srathge@napoleonohio.com

Wednesday, August 30, 2006

Mr. Charles Boss, Attorney  
111 West Dudley Street  
Maumee, Ohio 43537-2140

Dear Mr. Boss:

I write in response to our telephone conversation held on August 29, 2006 in regard to the Hogrefe property. I would support encouraging the City in executing the last option on the 5.658 acres earlier than anticipated in the event that more favorable terms to the City may be negotiated. If you recall, we built in a \$50,000.00 fencing payment as well as a \$150,000.00 loss of business payment separate and apart from the purchase price (to be determined). In the event that your client does not intend to continue with his business, perhaps these amounts could be adjusted downward. In lieu of reducing the price, I would suggest a deed restriction be included on Outlot No. 2 being the temporary storage site consisting of 6.909 acres to prohibit recycling facilities, salvage yards, junk yards or the like; moreover, I would suggest that your client propose a sale price for Outlot No. 2 for consideration of purchase by the City. Regardless of the above, your client must timely comply with the letter dated August 25, 2006 issued by the Zoning Administrator, as enclosed, in order to be in conformance with both the sales contract as well as our local rules and regulations governing zoning.

Finally, I would again encourage your client to meet with the CIC Director and discuss utilizing Outlot No. 2 consisting of 6.909 acres for development (perhaps a spec building) in the event he does not wish to sell the same. Perhaps there are some incentives to assist in developing this property.

Should you have any questions or comments, please do not hesitate to contact my office. I will hopefully be returning by October 2, 2006. In the event you wish to discuss any of the above, feel free to directly contact Dr. Jon A. Bisher, City Manager, 419-592-4010.

Sincerely,

David M. Grahn  
City Law Director

dmg/skr

cc: Jon Bisher, City Manager  
✓ Tom Zimmerman, Zoning Administrator



# CITY OF NAPOLEON

**BUILDING & ZONING DEPARTMENT**  
255 West Riverview Avenue, P. O. Box 151 Napoleon, OH 43545  
Tom Zimmerman, Building Inspector/Zoning Administrator  
Telephone: 419/592-4010 Fax: 419/599-8393  
[www.napoleonohio.com](http://www.napoleonohio.com)

August 25, 2006

Hogrefe Auto Salvage  
690 E Riverview Ave.  
Napoleon, OH 43545

Re: Conditional/Special Use

Gary Hogrefe:

Please be advised that the junk/salvage yard and/or storage facility established at the location of Commerce Drive, out lot no. 2, has not been issued a conditional use permit as required by City Code 1141.04. Although true, that storage facilities are permitted in I-2 (Industrial Zone), which is the zoning district for the parcel that is in question, a conditional use permit is required subject to approval of the City's Planning Commission and City Council.

It has been brought to my attention by the City Law Department that there was a provision as part an "Option to Purchase Agreement" Amendment No. 3 involving real estate owned by you and others for the City to make affirmative recommendations to the Planning Commission to allow for the salvage yard, subject to the established rules and regulations (the City Administration agreeing to recommend to the Commission the waiving of the residential proximately requirement, and the waiving of the fencing requirement for 24 month from the closing (April 6, 2007) on the adjacent property; however, the provision was not an automatic approval without issuance of a conditional use permit; therefore, application to the Planning Commission for such conditional use permit is necessary. My understanding was that the site in question was to be merely a temporary site for storage in an effort to have a location to expeditiously move cars off the land purchased by the City from you so that the cars could be crushed and removed. It appears that the location is being used for much more.

You are hereby notified that you are in violation of law as to your current activity at the location of out lot No. 2 Commerce Drive. I am giving you 30 days from the date of this letter to make proper application to the Planning Commission for a conditional use permit; otherwise, I will have no choice but to seek and injunction and take the appropriate legal action, to and including the issuance of citations to court.

I am enclosing an application blank for your convenience of filing. Any questions or comments, please feel free to contact my office.

Cordially,

Tom Zimmerman  
Zoning Administrator

cc: City Manager  
Mayor  
Law Director  
Members of Council



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Tom Zimmerman  
Zoning Administrator

cc: City Manager  
Mayor  
Law Director  
Members of Council

7005 0390 0003 9874 8519

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
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**OFFICIAL USE**

Postage	\$ .43
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 4.88</b>

Postmark Here  
SEP 25 2006

Sent To  
Gary Hogrefe  
690 E Riverview Ave  
Napoleon, OH 43545

PS Form 3800, June 2002 See Reverse for Instructions



# City of Napoleon – Law Department

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City Law Director  
David M. Grahm  
dgrahm@napoleonohio.com

Administrative Assistant  
Sheryl K. Rathge  
srathge@napoleonohio.com

## Memorandum

COPY

To: Mayor, Members of Council  
From: David M. Grahm, City Law Director  
cc: City Manager Bisher, Zoning Administrator Zimmerman  
Date: Friday, August 04, 2006  
Subject: Salvage Yard Consolidation/Hogrefes

At your request I have reviewed the most recent Amendment to the Option to Purchase Agreement between the City and Hogrefes, Amendment No. 4, that controls (note: Amendment No. 5 merely changed a legal description). It would appear that Section XI, the last paragraph controls. In summary, the City agreed to exercise due diligence in making affirmative recommendations to "Boards and Commissions" to allow the salvage yard consisting of approximately 6.909 acres to exist on its most recent location along Commerce Drive, subject to rules and regulations, except the proximity requirement associated to residential areas. I do not find where Hogrefes applied for a "Special" or "Conditional" Use Permit to have the salvage yard at said location (it was merely to have been a temporary site for staging); regardless, by the year 2011, one salvage yard must disappear. In the "Agreement" the City agreed to recommend to the Boards and Commissions the waiving of any fence requirement at the Commerce Drive site for 24 months from the last real estate closing, which appears to be April 6, 2007. I recommend that Zoning contact Gary Hogrefe and insist that he make proper application to the Planning Commission if he intends to continue at the Commerce Drive site.

dmg/skr

COPY

**OPTION TO PURCHASE REAL ESTATE  
Amendment No. 4**

WHEREAS, Robert Hogrefe, et. al. gave to the City of Napoleon, Ohio, for adequate consideration, a certain Option to Purchase Real Estate, dated March 18, 2002; and,

WHEREAS, the parties have three times amended the original Option to Purchase Real Estate that was signed by the Optionor; and,

WHEREAS, the parties are again desirous to amend the Option to Purchase; and,

Now Therefore, Gertrude Hogrefe, Executrix of the Estate of Robert Hogrefe, Deceased, Gertrude Hogrefe, Individually, Eugene Hogrefe, and Gary Hogrefe, collectively "Optionor" of 657 East Riverview Avenue, Napoleon, Ohio, 43545 and the City of Napoleon, Ohio, Optionee, with retroactive effect as of March 18, 2002, do hereby amend and restate said Option in its entirety to read as follows:

**Section I  
Grant of Options**

Optionor, in consideration of three thousand dollars (\$3,000.00) paid by Optionee to Optionor, receipt of which is acknowledged by Optionor, grants to Optionee the exclusive right and option to purchase, on the following terms and conditions herein set forth, the following described Parcels of land known as Parcels 1, 2, 3, and 4, in one or more Parcel purchases, all in the City of Napoleon, County of Henry, State of Ohio, described more fully as set forth in Exhibit "A" attached hereto and made a part hereof together with any improvements thereon. The options to purchase shall remain valid unless otherwise terminated in accordance with the terms and conditions herein set forth. The exercising on an option to purchase on an identified property herein listed shall constitute a "Contract for Sale" of the Parcel in accordance with the terms and conditions herein set forth. Notice of Optionee exercising the option at any time between the execution of this Agreement and the end of any above listed option period shall create a binding contract for purchase and sale of the Parcel as set forth herein.

**Section II  
Option Period**

The term of this Option for Parcel 1 and 3 will be approximately three years nine months (simultaneous options), commencing on March 18, 2002 and continuing until 11:59 PM on December 31, 2005; however, during the last remaining 360 day option period as it relates to Parcel 1 and 3, if the Optionor receives a bonifide offer to purchase the entire Parcel 1 and 3 simultaneously from a third party, not affiliated or related to Optionor, at a higher total price than what it may be purchased for by Optionee pursuant to this Amendment No. 4, then Optionee shall have forty-five (45) days from notice by Optionor to execute this option in accordance with the terms and conditions of this Amendment No. 4. In the event the Option is not executed in a timely manner, then this Option for Parcel 1 and 3 shall terminate. In no event shall the time to execute the option exceed 11:59 PM on December 31, 2005, unless otherwise agreed to in writing by the parties.

WARRANTY - The persons executing this Option warrant that they have full power and authority to do so.

LEGAL DESCRIPTIONS – The legal descriptions herein attached as Exhibit "A" made part of this document as if fully rewritten herein shall be an adequate description of the Parcel(s) that are the subject of this Option to Purchase Real Estate, except that the Optionor and Optionee understand that Parcel 4 merely contains 5.68 acres of land more or less, and Parcel 3 merely contains 11.502 acres of land more or less.

SALVAGE YARD CONSOLIDATION – Optionee agrees to exercise due diligence in making affirmative recommendations to such Boards or Commissions to accomplish the consolidation of a current licensed auto salvage yard by the Estate of Robert Hogrefe and Gary Hogrefe dba Hogrefe Auto Parts and/or Hogrefe Auto Parts, Inc. at the sole location of a parcel of land known as Out Lot No. 2 consisting of 6.909 acres of land abutting the west boundary of Commerce Drive, Napoleon, Ohio, all as shown on attached Exhibit No. "B", subject to all rules and regulations in effect at time of application, except any regulation regarding proximity to a residential area, any regulation regarding the number of required acres; moreover, Optionee shall recommend the waiving of the fencing requirement for twenty-four (24) consecutive months from the closing of the purchase of Parcel 1 by the Optionee. For the purpose of this Agreement, Optionee agrees that this is a mere consolidation on a part of the existing business location and shall constitute a grandfathering of the salvage yard for the sole purpose of permitting a conditional or special use permit. In the event of consolidation under this provision, the current salvage yard site on Riverview Avenue or the new consolidated salvage yard site must cease to exist as a salvage yard by the year 2011, regardless of ownership. It is the intent of the parties, that only one salvage yard site remain in existence. This provision is not transferable to another party without written consent of the Optionee, which shall not be unreasonably withheld. Optionee shall use due diligence in assisting Optionor in obtaining ingress and egress to Out Lot No. 2. In the event that ingress or egress rights are not provided by the Community Improvement Corporation of Henry County, Ohio within 30 days of closing on Parcel No. 1, the Optionee will accept the dedication of Commerce Drive and allow for ingress and egress by Optionor. The provisions under this paragraph entitled "Salvage Yard Consolidation" shall survive termination of this Agreement.

#### **Section XII Time of Essence**

Time is of the essence of this Option.

#### **Section XIII Binding Effect**

This Option will bind inure to the benefit of the parties hereto and their respective heirs, successors, or assigns.

**IN WITNESS WHEREOF:** the Optionor, Gertrude Hogrefe, Executrix of the Estate of Robert Hogrefe, Deceased has executed this Option Agreement this 17<sup>th</sup> day of January, 2005.

Signed and acknowledged in the presence of:

APR 26, 2005  
MUTUAL GENERAL RELEASE

As part of the consideration in transactions today between Hogrefe Auto Parts, an Ohio partnership, Hogrefe Auto Parts, Inc., an Ohio corporation, and Gary Hogrefe, individually, First Parties, and Gertrude Hogrefe, Executrix of the Estate of Robert Hogrefe, deceased, Gertrude Hogrefe, individually, and Theodore R. Hogrefe, Second Parties, First Parties, jointly and severally, and Second Parties, jointly and severally, do hereby release each other and each of them from any liability or claim based in whole or in part on any event, fact or transaction occurring prior to the date hereof, except that this general release shall not be construed to cancel the obligation of Gary Hogrefe in favor of Theodore R. Hogrefe on a promissory note dated today in the amount of \$40,290.00 nor the obligation of Gary Hogrefe and Hogrefe Auto Parts, Inc. to permit Theodore R. Hogrefe to use the salvage yard premises of Hogrefe Auto Parts and/or Gary Hogrefe for a period of three years from the date hereof on the terms set forth in an agreement among them executed on the date hereof.

Hogrefe Auto Parts, an Ohio partnership,

By: *Gary Hogrefe*  
Gary Hogrefe, Partner

Hogrefe Auto Parts, Inc., an Ohio corporation,

By: *Gary Hogrefe*  
Gary Hogrefe, President

*Gary Hogrefe*  
Gary Hogrefe, individually

*Gertrude Hogrefe*  
Gertrude Hogrefe, Executrix of the Estate of Robert Hogrefe and Gertrude Hogrefe, individually

*Theodore R. Hogrefe*  
Theodore R. Hogrefe



# CITY OF NAPOLEON, OHIO

## LAW DEPARTMENT

255 W. RIVERVIEW AVENUE, PO BOX 151  
NAPOLEON, OH 43545

PHONE: 419.592.3503 - FAX: 419.592.4723

Wednesday, November 17, 2010

Mr. Gary Hogefe  
Hogefe Auto Parts, Inc.  
690 E. Riverview Avenue  
Napoleon, Ohio 43545

COPY

Dear Mr. Hogefe:

I write you direct, with the authority of your attorney, Mr. Charles Boss, to remind you of the provision found in Section XI in Amendment No. 4 (dated January 17, 2005) to the original Option To Purchase Real Estate Contract (dated March 18, 2002) between the City and Robert Hogefe, et. al. (now Gary Hogefe) regarding "Salvage Yard Consolidation". Said provision of the contract requires you to eliminate by the year 2011 either the salvage yard located on Riverview Avenue or the salvage yard located on Commerce Drive, both being within the corporation limits of Napoleon, Ohio. It would appear that the timely elimination of the salvage yard located on Commerce Drive would be the most appropriate since the placement thereof is and was in violation of the City's Zoning Code. Please take steps to timely meet your obligation under the said contract so that both parties may save costly litigation costs that will occur if the City is forced to take legal steps to enforce the contractual provision. I have attached a copy of the contract for your review. Thank you for both your time and consideration in this matter.

Sincerely,

David M. Grahn  
City Law Director

dmg/skr

cc: Dr. Jon A. Bisher, City Manager  
Attorney Charles Boss  
Gregory Heath, Finance Director  
Tom Zimmerman, Zoning Administrator  
Members of Council and Mayor

---

City Law Director  
David M. Grahn  
dgrahn@napoleonohio.com

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**Section I  
Grant of Options**

Optionor, in consideration of three thousand dollars (\$3,000.00) paid by Optionee to Optionor, receipt of which is acknowledged by Optionor, grants to Optionee the exclusive right and option to purchase, on the following terms and conditions herein set forth, the following described Parcels of land known as Parcels 1, 2, 3, and 4, in one or more Parcel purchases, all in the City of Napoleon, County of Henry, State of Ohio, described more fully as set forth in Exhibit "A" attached hereto and made a part hereof together with any improvements thereon. The options to purchase shall remain valid unless otherwise terminated in accordance with the terms and conditions herein set forth. The exercising on an option to purchase on an identified property herein listed shall constitute a "Contract for Sale" of the Parcel in accordance with the terms and conditions herein set forth. Notice of Optionee exercising the option at any time between the execution of this Agreement and the end of any above listed option period shall create a binding contract for purchase and sale of the Parcel as set forth herein.

**Section II  
Option Period**

The term of this Option for Parcel 1 and 3 will be approximately three years nine months (simultaneous options), commencing on March 18, 2002 and continuing until 11:59 PM on December 31, 2005; however, during the last remaining 360 day option period as it relates to Parcel 1 and 3, if the Optionor receives a bonifide offer to purchase the entire Parcel 1 and 3 simultaneously from a third party, not affiliated or related to Optionor, at a higher total price than what it may be purchased for by Optionee pursuant to this Amendment No. 4, then Optionee shall have forty-five (45) days from notice by Optionor to execute this option in accordance with the terms and conditions of this Amendment No. 4. In the event the Option is not executed in a timely manner, then this Option for Parcel 1 and 3 shall terminate. In no event shall the time to execute the option exceed 11:59 PM on December 31, 2005, unless otherwise agreed to in writing by the parties.

Sec ~~II~~

WARRANTY - The persons executing this Option warrant that they have full power and authority to do so.

LEGAL DESCRIPTIONS – The legal descriptions herein attached as Exhibit “A” made part of this document as if fully rewritten herein shall be an adequate description of the Parcel(s) that are the subject of this Option to Purchase Real Estate, except that the Optionor and Optionee understand that Parcel 4 merely contains 5.68 acres of land more or less, and Parcel 3 merely contains 11.502 acres of land more or less.

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