

HB 1321

Chairman Kaldor and members of the commission,

My name is Brian Bitner. I am representing myself and I am asking for your help.

The current four-mile Extraterritorial Jurisdiction of the City of Bismarck is causing problems in Apple Creek Township.

My concerns with the Extraterritorial Jurisdiction started due to a dusty gravel road.

My home on 10 acres was outside of the jurisdiction of the City when I purchased it twenty years ago. My property, which is now 12 acres, borders 80<sup>th</sup> St. SE which is a gravel township road, and Apple Creek Road which is paved.

My neighbors and I have been trying for years to get something done about the constant dust from this gravel road as continuing development around our area has steadily increased traffic and the resulting dust from this road.

I took my concerns about the road to the City Commission where I was told that I could go ahead and pave the road myself, which I can't afford. Next I went to the Apple Creek Township board where I was informed that the Township would love to pave the road but that we cannot afford it. Why? We can't afford it because the township no longer receives revenue from such things as building permit fees which were used to maintain roads but now go to the City, and the township is basically broke. For single family residential, detached garage, and additions and remodeling, Township written building permits in 2006 were a whopping \$793, while, according to the City of Bismarck web site and the Township Assessors list, building permit fees for this category had a total of \$71,256.81 with a new construction value of \$13,193,385.00, which went to the City. This is substantial compared to the approximately \$32,000 annual budget of Apple Creek Township.

In the four-mile ETA for 2006 total building permit fees totaled \$258,535.70 with a new construction valuation of \$50,376,012.00.

Then I decided to add-on to my garage or put up a building so I had to go to the City instead of the Township for a building permit. I was **STUNNED** to find out that I cannot apply for a building permit without going through some City re-zoning process to include a new survey, sub-division platting, storm water management plan, etc. See Attached-

The city planning staff then informed me that if my home were to burn down, like my neighbors garage did this past spring, I would not be allowed to re-build because I can't get a building permit, apparently because my property is considered a non-conforming use by the City. I am licensed as a ND Class A contractor and am on good terms with the local engineering firm of Swenson and Hagen so I asked them how to do this city sub-division process and was told that the process will cost between **SIX** and **TEN** **THOUSAND DOLLARS** and will take about six months.

Then I was informed that as part of this new sub-division plat the County Engineer wants additional property from me for a wider road right of way easement despite Article 1,

Section 16 of the State Constitution which states, in part, "Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefore be first made in money or ascertained and paid into court for the owner unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies, or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located", which has not been done by the City or County in this instance, thus bypassing the State Constitution and circumventing eminent domain law.

All of this in order to apply for a building permit to protect my property and vehicles from summer storms and this un-remitting gravel road dust.

Article 1 Section 1 of the State Constitution specifically guarantees the rights of a citizen to acquire, possess, and protect property, among other rights.

I don't live inside the city limits yet am faced with a huge financial burden because of the Extraterritorial Jurisdiction. I am not allowed to run for the office of City Commissioner or Mayor or even vote in the City. I know that increasing my property value will increase my property tax and I am okay with that, but jumping through City hoops while spending big money to do so is an abuse of my rights as a property owner outside of the corporate city limits. I am asking for your help to correct this situation.

Apple Creek Township has a building inspector and zoning regulations in place which should apply to my property in the Township.

The City could easily accommodate long-time private property owners without treating all property as a new subdivision development by altering current policies so that a rural property owner is not faced with a huge financial burden for compliance with current City policies. Instead, I was told at a city commission meeting that if I didn't like it I should take it to the Legislature.

Property such as mine should, at the least, be grandfathered into the law similar to the grandfathering of the four mile jurisdiction of the city.