

Midway City Council
3 May 2022
Regular Meeting

Ordinance 2022-14 /
Streams, Waterways, and Ditches



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: May 3, 2022
NAME OF APPLICANT: Jeremy Clark, representative for Cari Lane LLC
AGENDA ITEM: Code Text Amendment of Title 16.14.8

Jeremy Clark, representative for Cari Lane LLC, is proposing an amendment to Chapter 16.14.8: Streams, Waterways, and Ditches. The proposed amendment would impact how close a proposed building envelope could be built to a designated flood zone.

BACKGROUND:

The purpose of this item is to review a code text amendment request to the land use ordinance regarding setbacks for structures from a delineated floodplain boundary as shown on the Flood Insurance Rate Maps (FIRM) and Midway City Floodplain Overlay Maps (MCFOM) for small scale and large-scale subdivisions. The applicant, Jeremy Clark, owns property that Snake Creek and its floodplain overlay resulting in a reduced buildable area on a parcel that he hopes to develop into a building lot one day. On the property that he owns, the floodplain widens out over a portion of his property, likely due to a less channelized stream channel, impacting the area where he would like to construct a future home. To be clear, staff is not aware of a building right currently on the property, and the current requirement does not appear to eliminate a future buildable area, but does prevent the applicant from building in the area where they would like to and also pushes them closer to their eastern property line that they would like to be.

FEMA regulations only preclude building in the mapped or delineated floodplain. Midways ordinance goes beyond that by requiring an additional buffer between the mapped boundaries and areas where a structure can be built. It is staff's opinion that this is for a few different reasons including protecting the floodway from encroachment,

minimizing damage to property owners in the event there is a flood event, but also protecting the environmental and open space assets that make Midway what it is.

Below is the current code language that the applicant is proposing to revise. We have provided the whole section for context, but the two sections proposed for revision are highlighted in blue:

16.14.8: Streams, Waterways, and Ditches

C. Boundary delineations: All construction or development on a parcel or lot that includes any delineated flood zones as per FEMA Flood Insurance Rate Maps (FIRM) and any parcel or lot that includes area in any Midway City Floodplain Overlay Maps (MCFOM) must meet the requirements of the Flood Damage Prevention ordinance found in the Midway Municipal Code and meet the following requirements:

1. Lots of record and previously platted lots: Any residential construction within 50 feet of a delineated flood zone shall have the lowest floor, including basements, elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence.

2. Small-scale subdivision: Lots may be approved within delineated boundaries of FIRM and MCFOM but the lowest floor of any residential construction, including basements, shall be elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence. Substantial efforts must be made to create building envelopes that are 50 feet from any delineated flood zones, though the lots themselves may encroach in the flood area.

3. Large-scale subdivisions: Lots may be approved within delineated boundaries of the FIRM and the MCFOM but building envelopes are required for all large-scale subdivisions and must be set back 50 feet from any flood zones to assure no residential buildings are constructed within 50 feet of any flood zones.

4. PUDs: All building footprints in a PUD shall have a 50-foot setback from any delineated flood zones.

The applicant is proposing that subsection 2 and 3, which governs small- and large-scale subdivisions, is amended to allow for a lesser distance between the edge of the delineated floodplain and a residential structure if certain conditions exist. Specifically, the applicant is proposing the following language is added to both sections:

“If the flood risk is mitigated by a 2’ rise or barrier, dwellings can be built 5’ from the 100 year floodplain boundary, but no closer than 50’ from a creek, lake, or other waterway”

We have included as an attachment, portions of the applicant's application that provides both their justification for the proposal as well as the positive and negative impacts they identified.

In reviewing the proposed code text amendment, staff reviews the Midway General Plan to see whether the proposed amendment helps accomplish its goals and policies. In 2016/2017, the current General Plan was revised and adopted. Two goals that were highlighted in that revision was to promote open space and to preserve the rural character of Midway. These two goals were developed as a response to the City's General Plan survey that was conducted in 2016. In that survey, information was gathered regarding the residents' preferences of the vision they have for Midway. 66% of the 483 responses to that survey stated the rural atmosphere was very important to them. 88% felt that preserving open space was very important. Midway is currently in the process of reviewing and updating the general plan once again. From an early review of the public feedback received, it appears that promoting open space and maintaining the rural character of Midway is still a high priority for residents.

Below are some examples from the General Plan that staff feels relate to the request:

Environment and Sensitive Land Element

Midway is characterized by valuable open space resources that contribute to the community's character and overall quality of life. Open spaces hold value for ecological, agricultural, cultural and recreational qualities, and these lands are worthy of careful planning and conservation.

GOAL 1: Environmental resources of the City should be protected including water quality, air quality, wildlife habitat, scenic quality, hillsides, ridge lines, prime agriculture land, open space, soils, vegetation, wetlands, riparian corridors and flood plains.

Objective 1: Protect all of the environmental and natural resources of the City by requiring development to occur in a manner and location which respects sensitive environmental lands: wetlands, flood plains and natural drainage patterns, steep slopes, productive agricultural lands, geologically unstable areas, critical wildlife areas, vegetation and important scenic features such as ridge lines hillsides and view corridors.

Guideline 3: Prohibit development or construction below any historic high-water line of all streams and rivers or whenever it will significantly alter the natural drainage patterns of the land. Development in a flood plain is strongly discouraged and if occurs shall specifically comply with all applicable Federal Emergency Management Agency regulations.

Objective 2: Protect water quality, including watershed areas, and ensure that there are adequate quantities of water for all residents of Midway.

Guideline 4: Adequate buffers from development should be provided along all water ways and wetlands in Midway.

Objective 5: Manage development, minimize damage and hazards, and protect life and property in areas subject to risk from natural hazards such as seismic activity, unstable soils, flooding conditions, and other geologic hazards.

Guideline 3: Promote open space and recreational uses in identified flood zones unless the hazard can be adequately mitigated.

Guideline 5: Midway should require the protection of all wetlands, streams and other waterways and other environmentally sensitive lands from construction impacts and runoff from parking lots, roads and other impervious surfaces

Community Vision Element

- *Effective planning through clustering, setbacks, Transfer Development Rights and animal/agriculture ordinances will help Midway to preserve its view corridors, maintain open spaces and reinforce a country/rural feeling.*
- *Midway is characterized by valuable open space resources that contribute to the community's character and overall quality of life. Open spaces hold value for ecological, agricultural, cultural and recreational qualities, and these lands are worthy of careful planning and conservation.*

Goal 1: To be a beautiful, organized small-town community based on its distinct history of agriculture, open space and recreation.

Guideline 5: Encourage the preservation of prime agricultural land and open space within Midway and the surrounding valley.

Land Use Element

Development Vision: To have a well planned community with land uses that enhance its unique characteristics by providing:

- *High-quality, well-planned residential areas with open spaces that support and complement the unique rural quality and character of the City;*
- *Open space areas, while preserving sensitive lands.*

Open Space Element

CREATE LOCAL NEIGHBORHOOD “OPENESS”

A sense of spaciousness in residential communities is provided by large setbacks, establishment of view corridors through restriction on view obstructing fences or structures, small community use areas (playgrounds, etc.), larger lot size zoning, and density regulations. For the most part, these features are required by city code, and not realized by open space acquisition. Recent revisions to city code have supported this objective, and further revisions can assist in its further realization.

Additionally, in Chapter 16.14 - Sensitive Lands Overlay Zone, the purpose section states that the standards and guidelines in this chapter are for the protection of natural resources and features. It includes a list of various purposes for the standards, some of which are:

- *Encourage development designed to reduce risks associated with natural hazards from stormwater runoff and erosion by requiring drainage facilities and the minimal removal of vegetation.*
- *Preserve natural features, wildlife habitat and open space.*
- *Preserve public access to mountain areas and natural drainage channels.*
- *Retain natural topographical features such as drainage channels, streams, ridgelines, rock outcroppings, vistas, trees and other natural plant formations.*
- *Establish land use management criteria that will encourage protection of natural features while allowing a harmonious and high-quality residential environment.*
- *Encourage location, design and development of building sites to provide maximum safety and human enjoyment while adapting the development to the best use of natural terrain.*
- *Identify and protect environmentally sensitive areas of the City.*
- *Protect these areas from flooding, erosion, storm water damage or fire hazard.*
- *Protect the public safety and public costs thereof.*
- *Protect the scenic and natural character and views of these areas*

Staff feels that the protection of floodplains serve various purposes and that the general plan supports maintaining the current 50’ buffer as stated and not approving an adjustment. While the 50’ buffer beyond a delineated floodplain boundary is over and above what FEMA requires, there may be value in maintaining these buffers, especially when there appears to be a city wide appetite for maintain open space and the rural character of the city, which staff believes these buffers help foster.

POSSIBLE FINDINGS:

- Various sections of the general plan support measures that will increase open space and protect the natural features of the city, including stream corridors
- Reducing the setback requirement will impact various properties differently but would ultimately allow some property owners to build closer to a stream corridor than is currently allowed.

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Ream: I make a motion that we recommend denial for an amendment to Chapter 16.14.8: Streams, Waterways, and Ditches. The proposed amendment would impact how close a proposed building envelope could be built to a designated flood zone. We approve the staff findings.

Seconded: Commissioner Garland

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners: Ream, Cliften, Wardle, and Garland

Nays: None

Motion: Passed

ALTERNATIVE ACTIONS:

1. Approval. This action can be taken if the City Council finds that the proposed language is an acceptable addition to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings

2. Continuance. This action can be taken if the City Council would like to continue exploring potential options for the amendment.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Denial. This action can be taken if the City Council finds that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Exhibits

**Exhibit 1 – Applicants Explanation for Code Text
Amendment**

Exhibit 2 – Emailed Public Comments

Exhibit 1

Reason and Justification for the Amendment: This section indicates building envelopes and houses must be 50' from the FEMA flood plain. The flood plain is often right at or near the edge of the creek on steep banks. The amendment seeks to maintain the minimum 50' from the creek or waterway, while allowing a dwelling to be built near the flood plain if the flood plain already extends 50' away from the waterway.

The amendment increases distance between homes, promotes open space, and provides more enjoyment of Midway's natural environment in a friendlier atmosphere.

Waterways remain protected and homes maintain protection from flooding.

BACKGROUND: In most areas of Midway, the FEMA FIRM maps show the 100 yr floodplain as the creek bank or near the creek bank. However, in areas of flat topography, the floodplain extends far away from Snake Creek and other waterways. The issue in these areas is not protecting the waterway itself, but reducing the risk of flooding for a residential home.

- Federal statutes from FEMA do not restrict a residential home built right at the floodplain.

- Midway requires a 50' boundary from the floodplain, which appears to have been instituted within the past 15-20 years as evidenced by the many existing homes much closer to Snake Creek.

- When the floodplain is already more than 50' from the waterway, the additional distance can hurt the community by forcing homes closer together, without notable additional protection of the waterway.

POSITIVE IMPACT: The proposal enhances the City's Vision of small town character and natural environment by allowing new residences further away from existing homes. It improves open space and view corridors and satisfies

neighbors while still protecting waterways.

NEGATIVE IMPACT: No clear negative impact. This proposal maintains a minimum 50' protective boundary from all waterways, which preserves a wide swath of open space.

The proposal supports the City's General Plan goals. Specifically, Goal 1 identifies open space as a component of our community's history. Goal 3 encourages a friendly community. Less impact on existing homes from new construction helps maintain that friendly atmosphere.

Proposed added language to end of 16.14.8.C.2 and/or C.3:

If the flood risk is mitigated by a 2' rise or barrier, dwellings can be built 5' from the 100 yr floodplain boundary, but no closer than 50' from a creek, lake, or other waterway.

Exhibit 2

Luke Robinson

From: Brandis Turner
Sent: Monday, April 11, 2022 8:56 PM
To: Celeste Johnson; Lisa Orme; Steve Dougherty; Jeff Drury; JC Simonsen; mkohler@le.ut.gov; Daniel Turner; Kevin Payne; Melannie Egan; Michael Henke
Subject: Cari Lane LLC Amendment to Chapter 16.14.8

To the Midway City Council Members,

We are writing to you on behalf of the Amendment to Chapter 16.14.8, Streams, Waterways, and Ditches. We are writing to voice our discomfort and hopes of rejection for the proposal of building in a flood zone (Previously documented as Whispering Creek). We live on Cari Lane, and will be 100% impacted by any future building of the proposed parcel. Our lot is directly north and adjacent to the proposal. Any future development on the approximate 5 acres would continue to add to the growing pains Midway is having. Not only would the potential homes of future residents be built in a flood plain, but it would negatively impact this neighborhood. With construction rising and the city unable to adequately keep up with the growth, from roadways, to schools, we hope that you will not allow any future development in or near the flood plain.

Kindly,

Daniel and Brandis Turner
Cari Lane Residents

Luke Robinson

From: Chris Carpenter
Sent: Monday, April 11, 2022 7:09 PM
To: Celeste Johnson; Lisa Orme; Lisa Orme; Steve Dougherty; Jeff Drury; Kevin Payne; JC Simonsen; Michael Henke; mkohler@le.ut.gov; Melannie Egan
Subject: Grave Concerns

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Greetings,

In what has been an ongoing dismissal of the voice of the people, the citizens of Midway and the actual home owners and tax payers regarding the wetlands and the development ongoing which includes the rerouting of Snake Creek among other things, I wanted to make clear that it is my intent to hire special counsel that specializes in the protection of wetlands to review the decisions that have been made up to this point, as well as a full audit of the financial transactions involved, down to the person. I will also be contacting the Army Core of Engineers to confirm all the proper permits were obtained in advance and that all federal guidelines and laws have been strictly adhered to along the way. My intent is not to threaten anyone. My intent is to clearly communicate what is going to take place in the near future so all of you are aware and prepared. I'm fed up with being discarded by my elected leaders, as are the majority of my neighbors.

You have consistently heard from us on this topic, the people, those directly affected by this ongoing travesty and the people who pay your salaries. You have consistently ignored us for reasons beyond our comprehension. It is my understanding that you will meet tomorrow to approve yet another request from Jeremy Clark who seems to do whatever he wants with your continued seal of approval. I'm sure you have yet again received a slew of comments from your constituents regarding this matter so I wanted to be sure that you were on notice that we will not go quietly into the night. We will fight for our wonderful city, our amazing neighborhood, and put an end to what is clearly an attack on the beauty of our neighborhood, the value of our homes, and the safety of our children and families.

I cannot protest with enough vehemence my disapproval of the requested development and I speak for a large group of Midway citizens. I urge you to shift directions and start making an effort to do the work of the people that put you in office. The whims of one developer should not outweigh the voice of the people, nor should it interfere with federally protected wetlands in any manner. While I appreciate Mr. Clark's desire to develop and profit from his investment properties (clearly that's all they are), this is NOT a properly zoned or geographically located area for him to do so. Our quaint Swiss Town should be protected, and the residents that chose to spend a considerable amount of money to live in this neighborhood should hold more sway, period.

It is my great hope that you reject any further requests for development by Mr. Clark on these premises. Stop this madness before it is too late. You will be contacted soon by special counsel to begin the necessary inquiry regarding your choices past, present, and future. Since you will not listen to the people you represent, we will hire a voice that you cannot ignore. It is unfortunate that it has to come to this, but as your constituents, you have left us no other choice.

Have a pleasant evening, and God Bless.



Chris Carpenter
Founding CEO | ChartSquad
Constantly Delivering

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Luke Robinson

From: wendy bolick
Sent: Monday, April 11, 2022 10:44 AM
To: Celeste Johnson; Lisa Orme; Steve Dougherty; Jeff Drury; Kevin Payne; JC Simonsen; Michael Henke; mkohler@le.ut.gov; Melannie Egan
Subject: Jeremy Clark Amendement Cari Lane LLC

Dear Madam Mayor, Midway City Council Members, and Planning Commission Members,

I am writing to voice my strong opposition to the amendment to Chapter 16.14.8 Streams, Waterways and Ditches proposed by Jeremy Clark, Cari Lane LLC. By changing the flow of the flood plane the surrounding neighbors including my property would be negatively impacted in case of a flood. Mr. Clark has already changed the flow of Snake Creek by building dams, putting in large boulders in for decorative purposes, and building a dedicated recreational area next to the creek impacting the flow down stream. He has done all of this without permission from local authorities or the Army Corp of Engineers.

In fact, Mr. Clark has demonstrated a recurring pattern in his building projects of blatant disregard for rules and regulations, the comfort and security neighbors, and those who purchase his properties. Whether it's his plan to turn the property in question into a busy event center for large gatherings including parking for 175 people next door to me, building shoddy high density condos at the Lodges, rerouting Snake Creek to his liking, or building unsightly three story apartment buildings in single story neighborhoods, it seems Mr. Clark does whatever he wants, wherever he wants. He gives the distinct impression that he feels entitled to do all these things without any regard for established neighbors, natural resources or the aesthetics of this lovely place we call home.

Because of Mr. Clark's track record I can say with a great deal of confidence that if the amendment is granted, he will certainly push the limits of its parameters. He is well known around this neighborhood for agreeing to things, then doing whatever he wants.

Again, I implore the Planning Commission to deny this amendment for the good of our community.

Sincerely,

Wendy Bolick
501 Meadowcreek Lane
Midway, UT 84049

Luke Robinson

From: Robert L. Bolick
Sent: Monday, April 11, 2022 2:32 PM
To: Celeste Johnson; Lisa Orme; Steve Dougherty; Jeff Drury; Kevin Payne; JC Simonsen; Michael Henke; mkohler@le.ut.gov; Melannie Egan
Subject: Jeremy Clark Amendment Cari Lane LLC

Dear Madam Mayor, Midway City Council and City Planning Commission:

I am quite concerned about granting any modification to the requirements of the laws entailed in Chapter 16.14.8: Streams, Waterways and Ditches. Those laws were put in place based on water and natural resource experts who know about waterways in Utah. These laws were enacted by our legislature for a reason, namely to protect Utah waterways and properties adjacent to them.

I believe that it would be most unwise for anyone without expertise in this area to approve any modifications, cross our fingers and hope that everything turns out well.

I'm not smart enough to know all the repercussions of modifying them and my crystal ball is inoperative at the moment. I'm concerned that if approved, it would permanently alter something in ways we can't anticipate or imagine.

As a property owner downstream from this property, I'm not happy about the prior unauthorized modifications already made to the stream, which I understand has both civil and criminal liability.

I'd prefer to have City Council require that the stream and property be put back to its original condition and then have the owner seek modification from the Utah State Division of Water Resources and the Army Corps of Engineers.

Sincerely,

Rob Bolick
501 Meadow Creek Lane
(with emphasis on "creek")

Luke Robinson

From: Tom Bradley ·
Sent: Tuesday, April 12, 2022 2:25 PM
To: Michael Henke; Melannie Egan
Subject: Public Comment Regarding Cari lane LLC

I can not attend the Planning Commission meeting on 4/12. I wish to submit my comments below

I oppose amending Chapter 16.14.8 per the request by Jeremy Clark with a basis that the current code is to protect open space and natural resources and I only see a negative impact this amendment would make to open space and natural resources. As development increases, the city needs to be more protective of our wonderful natural resources. We should not lessen the protection of these beautiful natural resources and open space, especially the Snake Creek corridor.

It seems this proposed amendment is referencing 1 house that Mr. Clark would like to build closer to the creek. Although, it seems there are many other potential houses in the recently proposed Whispering Creek subdivision that would be affected by this amendment. It would seem that Mr. Clark could also add more houses to his development plan if this amendment was approved. I feel the intent of amending this code is not being fully disclosed by Mr. Clark. Mr. Clark bought this property with the current code and setbacks already in place.

It is my understanding that Mr. Clark has already made alterations to the wetland, creek, and floodplain on this property that have not been approved by the city, county, state, or Army Corp of Engineers.

It would be my hope and request that the Planning Commission does not recommend this amendment for approval by the city council based on the residents of Midway wanting to protect the natural resources and protect open space.

Tom Bradley
570 Cari Lane (owner and resident)

Luke Robinson

From: JC Simonsen
Sent: Tuesday, April 12, 2022 2:38 PM
To: Chris Carpenter; Celeste Johnson; Lisa Orme; Steve Dougherty; Jeff Drury; Kevin Payne; Michael Henke; mkohler@le.ut.gov; Melannie Egan
Subject: Re: Grave Concerns

Chris,

Thanks. Yeah if there is a Federal wetland expert that needs to be hired, I'll probably be on board for hiring one. On the other hand, I fully support citizens if you feel like you need to do that, but I'd rather work with you than against you; I'm one of you.

Hold off on walking the waterway -- by memory I think you may have a right if you are in the middle of the stream (may wearing waders or floating on a canoe or something) but it may not be that simple in all cases, so certainly don't quote me on that or act on it. If you do have the right I also think it may be a wise step to notify the sheriff and the landowner that you are planning to exercise your right -- to avoid any kind of escalated confrontation. I'll add these to my list of questions to follow up on.

Thanks,

JC

On 4/12/22 14:27, Chris Carpenter wrote:

JC,

Thank you for your promised diligence regarding what actions have been taken by Mr. Clark. With regard to the black and white letter of the law, I was solely stating that Mr. Clark seems to have no regard for it. I don't know that Midway even has full knowledge of the liberties he takes with each procedural "approval" he is granted. I leave open the possibility that we are ALL in the dark, as none of us get to enter his property to see what he has chosen to do.

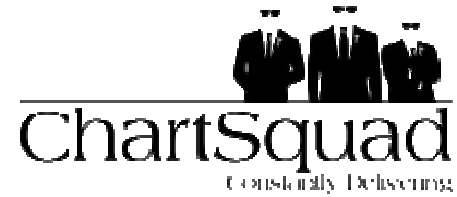
With each request he has made, he inches closer to his ultimate goal of high volume residencies to maximize revenue on his acreage. Obviously he does not come outright and say what his true plans are, but the track record here is what has all of us neighbors up in arms. Before we know it he'll have three story apartment/condo building popping up and this terrifies all residents that can see it coming. Again, while I fully respect his desire to develop his land, all of us neighbors can see that he's not following the "black and white letter of the law" and that his eventual goal is being masked using the very procedure you identified.

I look forward to exploring our available options further and will hold off on hiring the federal wetland attorney in the meantime.

I have immense love and respect for our city and do NOT want to see it turned into another Park City debacle. I'm sure with a joined effort between our leaders and the citizens, we can subvert the greedy developers that value coin over community!

One question in closing. What is the legal easement distance along Snake Creek? As a taxpayer, do I have the right to walk the Snake Creek even where it enters another person's property and if so, how many feet are protected from the edge of each shore of the creek?

Chris Carpenter
Founding CEO | ChartSquad
Constantly Delivering



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From: JC Simonsen
Sent: Tuesday, April 12, 2022 2:11 PM

Subject: Re: Grave Concerns

Chris,

Thank you for your email and I appreciate how stressful it can be when things are proposed in your neighborhood that don't seem good. Thank you for your effort to work forward from there.

I understand that you are saying "the black and white letter of the law" is not being followed, if what you mean by that is you feel Jeremy has done things he shouldn't have. If you mean something else I'm not clear on what you mean.

Regarding I will follow up on the status of the past actions by Jeremy -- whether the city can say they were illegal and what we're doing about it. I'm not sure it's true that Midway is "not taking action", nor what portions Midway has jurisdiction over regarding tracking or enforcement but I can ask more

questions about the status and maybe pass on more regarding that. I can tell you that Midway does work hard to make sure everyone is following the laws and processes they are supposed to follow. Sometimes people don't and whether we catch them sooner or later, it's always a frustration. We don't have full authority or responsibility in all cases to monitor or enforce but we want to do everything we can and treat all activities in the city the same -- no special treatment. So yes I'll follow up on this. But I think in most ways that's really a totally separate issue from the item that is on the planning commission agenda. I think in that case Jeremy is following city code and making a request following standard procedure for that, he has the right to ask and we have the obligation to hear it.

Thanks,

JC

On 4/12/22 13:59, Chris Carpenter wrote:

JC,

I greatly appreciate your response, and having fresh, less frustrated eyes on my original email leaves me in accord with your assessment; my tone left much room for improvement. I do apologize for the immense frustration that made its way into my communication.

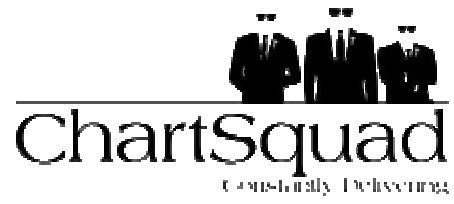
Additionally, I'm certain I need to brush up on my Civics with regard to due process and how these situations unfold. Thank you for pointing out that it's not as simple as we the people may understand it to be.

That said, the facts as they exist on this very day demonstrate that Mr. Clark does not abide the laws and does what he chooses with each "approval" he is granted. Without a permit from the Army Core of Engineers (which prohibits some of his plans) he took it upon himself to clear the wetlands and build a bridge over Snake Creek. This is flat out illegal and since Midway is not taking action, that is why we the people feel we need to hire legal representation to protect further illegal development. We do not wish to waste our hard earned dollars, but as previously mentioned we feel we have no other choice.

While I respect the due process you are obligated to follow, it does not change the fact that the black and white letter of the law is being ignored. If you have another suggestion on how we the people might endeavor to put an end to his frivolous behavior instead of hiring special counsel, I would welcome that path. We have already tried reasoning with the planning commission in previous instances and our pleas fall on deaf ears. This is the very impetus for the many communications you are likely receiving from residents.

I look forward to your response, and again, sincere apologies for my tone and approach in the original correspondence. I should have slept on that before pressing send and you were 100% right to call me on that. Thank you.

Chris Carpenter
Founding CEO | ChartSquad
Constantly Delivering





Midway

**ORDINANCE
2022-14**

**AN ORDINANCE AMENDING SECTION 16 OF THE MIDWAY CITY CODE REGARDING
BUILDING PROXIMITY TO FLOOD ZONES, AND RELATED MATTERS**

WHEREAS, all development within the City of Midway is required mitigate the danger involved in building within or near existing floodplains; and

WHEREAS, the existing City Code requires certain setbacks for new construction which is designed to keep that construction away from existing flood zones and floodplains; and

WHEREAS, the City Council desires to amend and update portions of the Midway City Code to reflect additional ways in which the floodplain or flood zone restrictions can be lessened or the danger mitigated against; and

WHEREAS, the adoption of this ordinance will be in the best interests of the citizens of Midway City;

NOW, THEREFORE, be it hereby Ordained by the City Council of Midway City, Utah, as follows:

The following new language (**as shown in red**) is added:

16.14.8: Streams, Waterways, and Ditches.

C.

2. Small-scale subdivision: Lots may be approved within delineated boundaries of FIRM and MCFOM but the lowest floor of any residential construction, including basements, shall be elevated 18 inches above the base flood elevation as shown on the FIRM. The elevation must be certified by a licensed engineer or licensed surveyor and marked on site before the building inspector allows construction to commence. Substantial efforts must be

made to create building envelopes that are 50 feet from any delineated flood zones, though the lots themselves may encroach in the flood area. **If the flood risk is mitigated by a 2-foot rise or barrier, dwellings can be build 5 fee from the 100 year floodplain boundary, but no closer than 50 feet from a creek, lake, or other waterway.**

3. Large-scale subdivisions: Lots may be approved within delineated boundaries of the FIRM and the MCFOM but building envelopes are required for all large-scale subdivisions and must be set back 50 feet from any flood zones to assure no residential buildings are constructed within 50 feet of any flood zones. **If the flood risk is mitigated by a 2-foot rise or barrier, dwellings can be built 5 feet from the 100 year floodplain boundary, but no closer than 50 feet from a creek, lake or other waterway.**

This Ordinance shall take effect immediately upon publication as required by law.

PASSED AND ADOPTED by the Midway City Council on the ____ day of _____, 2022.

MIDWAY CITY COUNCIL

	AYE	NAY
Council Member Steve Dougherty	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Kevin Payne	_____	_____
Council Member JC Simonsen	_____	_____

APPROVED

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM

Corbin B. Gordon, City Attorney