

CITY OF TRUSSVILLE
PLANNING & ZONING COMMISSION
NOVEMBER 2022 MINUTES

The Trussville Planning & Zoning Commission met for a **workshop** session on **Thursday, November 10, 2022** at 6 pm at Trussville City Hall Annex.

Those members present:	Vice Chairman Jim Meads Councilor Ben Short Wayne Sullivan – City Engineer & board member Ralph Robson Ryan Dawkins Steve Turner Kris Reeves
Also present:	Fire Marshal Jesse Clifton Director of Planning, Building & Sustainability J.R. Malchus City Clerk Dan Weinrib
Those absent:	Chairman Darrell Skipper Brett Isom Police Representative

Vice Chairman Meads convened the workshop promptly at 6 pm. They reviewed minutes, one annexation proposal and three subdivision proposals. They quickly determined they had enough information to keep Trussville Utilities' survey application on the agenda.

Norman Nix had submitted an annexation application for adjacent property he owned and a subdivision application on his late parents' home property next door. The Commission delayed putting the annexation application on the agenda because the subject parcel is less than an acre, which does not meet the lot-size requirement for City A-1 zoning. They also put his related subdivision application on hold because his proposed Lot 1 was under one acre. City Engineer Wayne Sullivan encouraged Nix to have his surveyor contact him about corrective measures to his application.

Eastern Valley LLC had submitted its proposed Crossings at Deerfoot Phase 4, Sector 2 12-lot subdivision. Developer Charles Kessler represented himself and superintendent John Summers. Fire Chief Tim Shotts and Fire Marshal Jesse Clifton spoke up in opposition to the application. Evidently, the developer had already constructed an 84-foot diameter dead-end for the subject property, prior to final plat approval. The Fire Department took issue with it because the Fire Code requires 96 feet and the City had previously reached a compromise of 90-92 feet, so that the developer would not have to move utilities. Kessler disagreed, stating that he constructed the 84-foot circle based on his engineer's directions. He argued that his contractor has never lied to him about anything, including this topic; otherwise, he never would have constructed a smaller dead end. Kessler admitted he was not at the meeting with Malchus and Summers where they discussed as close to 90 feet without moving utilities. Via speaker phone, Malchus told the Commission that the compromise was for approximately 90 feet, but as large as they could without affecting utilities. However, it was left unclear whether 90 feet meant pavement only or included the curbing. The disagreements prompted Meads to ask whether the Commission could approve a plat that included dead-end that does not meet the 2015 Fire Code (Ordinance No. 2016-001-ADM, adopted January 12, 2016) The Commission, including its recording secretary, encouraged Meads to get a legal opinion from city attorney Chesley Payne prior to the Monday meeting.

The Commission then gave informal guidance to Zakir and Mina Khan, owners of the undeveloped parcel located at 3465 Pear Street. The terrain makes it costly to build a driveway access to Pear Street, so the Commission advised them to construct it over an undeveloped yet recorded dead-end right-of-way, located between 3445 & 3451 Coody Road. The owners verbally agreed to give the City Clerk a written statement, agreeing never to subdivide their property. They also understood that owners of 3445 & 3451 Coody Road could build driveway access spurs off their proposed driveway.

With no further matters to discuss, the agenda workshop concluded around 6:40 pm.

The Trussville Planning & Zoning Board met in **regular** session on **Monday, November 14, 2022**, at 6 pm at Trussville City Hall Annex.

Those members present:	Vice Chairman Jim Meads Ralph Robson Councilor Ben Short Wayne Sullivan – City Engineer & board member
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Steve Turner

Those members absent:

Chairman Darrell Skipper
Brett Isom
Ryan Dawkins
Kris Reeves
Police Representative

Also present:

City Clerk & Recording Secretary Dan Weinrib
Fire Chief Tim Shotts
Fire Marshal Jesse Clifton
Director of Planning, Building & Sustainability J.R. Malchus

Vice Chairman Meads convened at 6:05 pm. The Board reviewed minutes from October 2022 workshop and regular session. Meads moved and Short seconded the motion for approval as presented. **UNANIMOUS**

Under subdivisions, the Commission reviewed Trussville Utilities' proposed survey for Fire Station No. 4, a 5.82-acre plot located on Trussville-Clay Road, south of Martin Road. J.T. Murphy of Civil Consultants represented the applicant. He told the Commission that after adjustments, the final survey would show three lots. Sullivan questioned whether Martin Road was really a county road due to the lack of signage and right of way. Murphy did not disagree with Sullivan. He pointed out that the back lot would be accessible from Memory Lane. Vice Chairman Meads opened the public hearing then promptly closed it due to lack of public feedback. When asked, Sullivan said he would support the final plat as long as it showed all three lots, identified the roads touching each lot and that each lot obtained a new address. Sullivan moved and Turner seconded the motion for approval with those noted stipulations. **UNANIMOUS**

The Commission then reviewed Eastern Valley LLC's proposed 12-lot Crossing at Deerfoot Phase 4 Sector 2 final plat. Jason Kessler represented his company. Vice Chairman Meads brought up the issue regarding the cul-de-sac dimensions and the International Fire Code. He first recognized city attorney Chesley Payne, who shared with the Commission his legal opinion. *Earlier in the day, Payne shared his legal opinion via email, which is attached to these minutes.*

2015 Fire Code Appendix D mandates a 96-foot diameter cul-de-sac circle. In a previous conversation, Malchus and the developer informally agreed upon approximately 90 feet, but as large as they could without affecting utilities. It was left unaddressed whether the 90-feet included or excluded curbing. The building contractor wound up building an 86-ft diameter pavement circle (88 feet curb wall to curb wall; 89 feet outside curb edge-to outside curb edge) When asked by Short, Kessler stated he had submitted plans to the City Engineer and Fire Marshal over four years ago. Sullivan countered that he had not seen specific plans prior to this subdivision. Since then, the original engineer switched firms. Rodney Cunningham now handles this matter. Under further questioning, Kessler stated that the 4A final plat was approved in 2015; the preliminary 4B plat was approved in either 2014 or 2015.

Discussion ensued regarding the time lag between such prior plat approval, the City's adoption of the 2015 Fire Code and the start of subdivision development. Sullivan stated that the sector approval expired due to no starting action within a year as well as general lack of activity.

Kessler stated that his business maintained its land disturbance permit and bond. He emphatically said that they intended all along to work within the scope of the permit and that they had never been told the delayed start and lack of activity were going to be issues. "We want to find some resolution to this," he said. "I'll make sure it won't happen again."

Prior to the meeting, the Fire Department weighed in on the Fire Code enforcement issue with an opinion co-authored by Clifton and Shotts, with input from the State Fire Marshal. *It too is attached to these minutes.* When asked by Meads whether he would pursue a misdemeanor violation against Eastern Valley LLC (Kessler), Clifton deferred to Shotts, who in turn deferred to State Fire Marshal Scott F. Pilgreen. The Fire Department expressed concern for a dangerous precedent of enabling a contractor to proceed with non-compliant construction. There was universal agreement that any civil or criminal action would be taken against the contractor, not the City. It was clear that the contractor performed work without a current permit. Malchus acknowledged not having issued a stop-work order.

Vice Chairman Meads opened the public hearing then promptly closed it due to lack of public feedback.

The Commission deliberated. Turner made the motion for plat approval with Short's suggested friendly amendments that the contractor first pay retroactively for permits not previously obtained --

penalties/fine(s) included – in addition to getting compliant on a go-forward basis. Short seconded the motion. **UNANIMOUS**

Under Miscellaneous, the city clerk gave a briefing to the Commission regarding the proposed 2023 meetings calendar.

With no further business remaining, Vice Chairman Meads adjourned the meeting around 6:44 pm.



City of Trussville

Fire & Rescue

Pride, Courage, and Integrity

Jesse Clifton
Fire Marshal

Mobile: 205-937-0058
jclifton@trussvillefire.com

To the members of the Planning and Zoning Board for the City of Trussville,

All the members of this board have been provided with documentation today to the effect that the approval of the Deerfoot Crossings project is in direct conflict with state law. The State Fire Marshal verified that Appendix D is state law and supercedes anything adopted by the city.

However, the most pressing problem with this action is the way in which it was pushed forward. The developer built a street that was not code compliant with no permit or approved plan. A stop work order was issued until there could be an approved plan. No plan was ever submitted. No permit was ever purchased. The contractor proceeded to pour the curbs without any approval and is currently paving the road.

By approving this action the board would enable this contractor to proceed with construction in direct violation of the state law, with the knowledge that they are doing so. This sets a very dangerous precedent for future projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Jesse Clifton".

Jesse Clifton, Fire Marshal

A handwritten signature in black ink, appearing to read "Tim Shotts".

Tim Shotts, Fire Chief

Information

Pilgreen, Scott <Scott.Pilgreen@insurance.alabama.gov>

Mon 11/14/2022 2:34 PM

To: Jesse Clifton <jesse.clifton@trussville.gov>

You don't often get email from scott.pilgreen@insurance.alabama.gov. [Learn why this is important](#)

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Jesse,

The two PDF attachments are the AG Opinions I mentioned earlier.

To summarize our earlier conversation, it's my opinion with regards to fire/building codes that local jurisdictions can be more restrictive but not less restrictive than what the Fire Marshal has adopted, I believe the attached AG's Opinions clearly state the same. Generally when local jurisdictions become more restrictive it by their adoption of a local ordinance which puts the restriction(s) in place.

FYI: The excerpt below can be found in **Code of Alabama, 36-19-3 / Persons deemed assistants to Fire Marshal; duties, obligations, etc., thereof generally.**

The chief of the fire department, the chief of police or marshal of every incorporated city or town in which a fire department is established, the mayor of each incorporated town in which no fire department exists and the sheriffs of the several counties of the state shall be, by virtue of such offices so held by them, assistants to the Fire Marshal, subject to the duties and obligations imposed by this article and subject to the direction of the Fire Marshal in the execution of the provisions of this article.

Scott F. Pilgreen
ALDOI Criminal Investigations Division
Director / State Fire Marshal
Phone: 334.241.4166
Fax: 334.241-4158

Agency Web Site: <http://www.aldoi.gov>



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ALABAMA STATE FIRE MARSHAL REGULATION
Chapter 482-2-101

(3) NFPA 921 of the most current edition is not adopted as a mandatory provision but rather is to be used as a guide in conjunction with numerous other fire and explosive investigation guidelines available throughout the United States.

Author: State Fire Marshal

Statutory Authority: Ala. Code §§ 27-2-17, 36-19-9

History: New June 1, 1965, effective June 1, 1965; Revised September 24, 1975, effective September 24, 1975; Revised October 1, 1991, effective October 16, 1991; Revised August 15, 1995, effective August 30, 1995; Revised June 15, 1998, effective July 1, 1998; Revised September 19, 2003, effective October 1, 2003; Revised November 9, 2010, effective November 22, 2010; Revised November 10, 2016, effective January 1, 2017; Revised June 14, 2017, Effective June 24, 2017

482-2-101-.02. Adoption of International Fire Code® (2015 Ed.); exceptions.

(1) Except as specifically provided in paragraph (2), the 2015 edition of the International Fire Code® and Appendices B, C, D, E, and M, as promulgated by the International Code Council®, are adopted by reference as a regulation of the State Fire Marshal. Said code shall be used for projects on which the date of the architectural services contract is on or after the effective date of this rule as revised.

(2) The following portions of the 2015 edition of the International Fire Code® are not adopted:

- (a) Part 2 of Chapter 1 ("Administration and Enforcement").
- (b) Appendix A.
- (c) Section D107 of Appendix D is not adopted but is recommended.
- (d) Appendix F.
- (e) Appendix G.
- (f) Appendix H.
- (g) Appendix I.
- (h) Appendix J.
- (i) Appendix K.
- (j) Appendix L.

Author: State Fire Marshal

Statutory Authority: Ala. Code §§ 27-2-17, 36-19-9

History: New November 9, 2010, effective November 22, 2010; Revised November 10, 2016, effective January 1, 2017

APPENDIX D

FIRE APPARATUS ACCESS ROADS

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

SECTION D101 GENERAL

D101.1 Scope. Fire apparatus access roads shall be in accordance with this appendix and all other applicable requirements of the *International Fire Code*.

SECTION D102 REQUIRED ACCESS

D102.1 Access and loading. Facilities, buildings or portions of buildings hereafter constructed shall be accessible to fire department apparatus by way of an *approved* fire apparatus access road with an asphalt, concrete or other *approved* driving surface capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds (34 050 kg).

SECTION D103 MINIMUM SPECIFICATIONS

D103.1 Access road width with a hydrant. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm), exclusive of shoulders (see Figure D103.1).

D103.2 Grade. Fire apparatus access roads shall not exceed 10 percent in grade.

Exception: Grades steeper than 10 percent as *approved* by the fire chief.

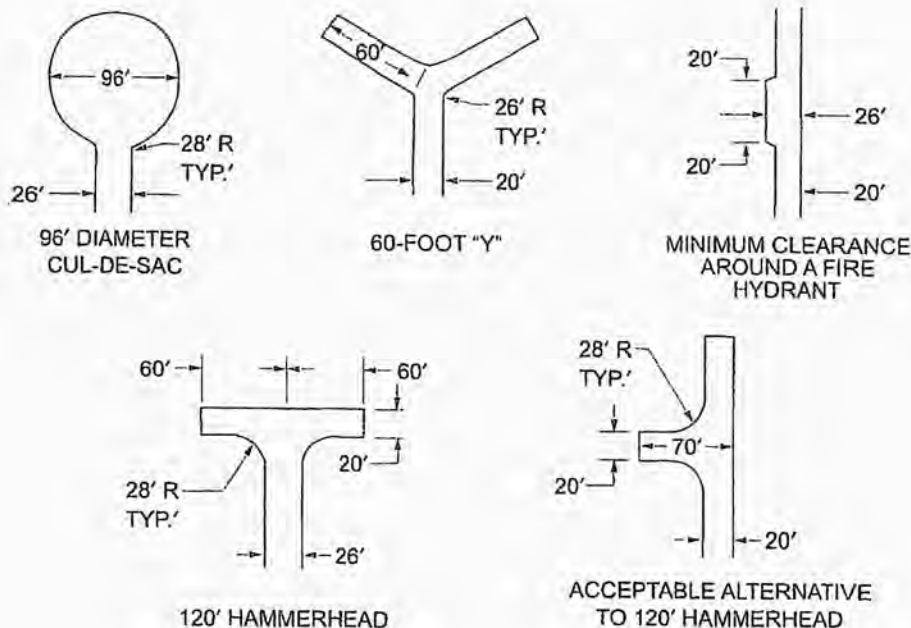
D103.3 Turning radius. The minimum turning radius shall be determined by the *fire code official*.

D103.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) shall be provided with width and turnaround provisions in accordance with Table D103.4.

TABLE D103.4
REQUIREMENTS FOR DEAD-END
FIRE APPARATUS ACCESS ROADS

LENGTH (feet)	WIDTH (feet)	TURNAROUNDS REQUIRED
0-150	20	None required
151-500	20	120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure D103.1
501-750	26	120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure D103.1
Over 750		Special approval required

For SI: 1 foot = 304.8 mm.



For SI: 1 foot = 304.8 mm.

FIGURE D103.1
DEAD-END FIRE APPARATUS ACCESS ROAD TURNAROUND

D103.5 Fire apparatus access road gates. Gates securing the fire apparatus access roads shall comply with all of the following criteria:

1. Where a single gate is provided, the gate width shall be not less than 20 feet (6096 mm). Where a fire apparatus road consists of a divided roadway, the gate width shall be not less than 12 feet (3658 mm).
2. Gates shall be of the swinging or sliding type.
3. Construction of gates shall be of materials that allow manual operation by one person.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
5. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the fire code official.
6. Methods of locking shall be submitted for approval by the fire code official.
7. Electric gate operators, where provided, shall be listed in accordance with UL 325.
8. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

D103.6 Signs. Where required by the fire code official, fire apparatus access roads shall be marked with permanent NO PARKING—FIRE LANE signs complying with Figure D103.6. Signs shall have a minimum dimension of 12 inches (305 mm) wide by 18 inches (457 mm) high and have red letters on a white reflective background. Signs shall be posted on one or both sides of the fire apparatus road as required by Section D103.6.1 or D103.6.2.



FIGURE D103.6
FIRE LANE SIGNS

D103.6.1 Roads 20 to 26 feet in width. Fire lane signs as specified in Section D103.6 shall be posted on both sides of fire apparatus access roads that are 20 to 26 feet wide (6096 to 7925 mm).

D103.6.2 Roads more than 26 feet in width. Fire lane signs as specified in Section D103.6 shall be posted on one

side of fire apparatus access roads more than 26 feet wide (7925 mm) and less than 32 feet wide (9754 mm).

SECTION D104

COMMERCIAL AND INDUSTRIAL DEVELOPMENTS

D104.1 Buildings exceeding three stories or 30 feet in height. Buildings or facilities exceeding 30 feet (9144 mm) or three stories in height shall have at least two means of fire apparatus access for each structure.

D104.2 Buildings exceeding 62,000 square feet in area. Buildings or facilities having a gross building area of more than 62,000 square feet (5760 m²) shall be provided with two separate and approved fire apparatus access roads.

Exception: Projects having a gross building area of up to 124,000 square feet (11 520 m²) that have a single approved fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems.

D104.3 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the lot or area to be served, measured in a straight line between accesses.

SECTION D105

AERIAL FIRE APPARATUS ACCESS ROADS

D105.1 Where required. Where the vertical distance between the grade plane and the highest roof surface exceeds 30 feet (9144 mm), approved aerial fire apparatus access roads shall be provided. For purposes of this section, the highest roof surface shall be determined by measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of parapet walls, whichever is greater.

D105.2 Width. Aerial fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm), exclusive of shoulders, in the immediate vicinity of the building or portion thereof.

D105.3 Proximity to building. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572 mm) and a maximum of 30 feet (9144 mm) from the building, and shall be positioned parallel to one entire side of the building. The side of the building on which the aerial fire apparatus access road is positioned shall be approved by the fire code official.

D105.4 Obstructions. Overhead utility and power lines shall not be located over the aerial fire apparatus access road or between the aerial fire apparatus road and the building. Other obstructions shall be permitted to be placed with the approval of the fire code official.

SECTION D106

MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENTS

D106.1 Projects having more than 100 dwelling units. Multiple-family residential projects having more than 100 *dwelling units* shall be equipped throughout with two separate and *approved* fire apparatus access roads.

Exception: Projects having up to 200 *dwelling units* may have a single *approved* fire apparatus access road when all buildings, including nonresidential occupancies, are equipped throughout with *approved automatic sprinkler systems* installed in accordance with Section 903.3.1.1 or 903.3.1.2.

D106.2 Projects having more than 200 dwelling units. Multiple-family residential projects having more than 200 *dwelling units* shall be provided with two separate and *approved* fire apparatus access roads regardless of whether they are equipped with an *approved automatic sprinkler system*.

D106.3 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.

SECTION D107

ONE- OR TWO-FAMILY
RESIDENTIAL DEVELOPMENTS

D107.1 One- or two-family dwelling residential developments. Developments of one- or two-family dwellings where the number of *dwelling units* exceeds 30 shall be provided with two separate and *approved* fire apparatus access roads.

Exceptions:

1. Where there are more than 30 *dwelling units* on a single public or private fire apparatus access road and all *dwelling units* are equipped throughout with an *approved automatic sprinkler system* in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3 of the *International Fire Code*, access from two directions shall not be required.
2. The number of *dwelling units* on a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the *fire code official*.

D107.2 Remoteness. Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.

SECTION D108

REFERENCED STANDARDS

ASTM	F 2200—13	Standard Specification for Automated Vehicular Gate Construction	D103.5
ICC	IFC—15	International Fire Code	D101.1, D107.1
UL	325—02	Door, Drapery, Gate, Louver, and Window Operators and Systems, with Revisions through June 2013	D103.5

From: Chesley P. Payne <cpayne@msnattorneys.com>
Sent: Monday, November 14, 2022 12:33 PM
To: Meads, Jim; Benjamin Short; Jesse Clifton
Cc: Dan Weinrib; Wayne Sullivan; Steve Turner; Ralph Robson (robsoncontractorsinc@gmail.com); Ryan Dawkins; Kris Reeves (kris@peakstoragegroup.com); Darrell Skipper; Brett Isom (bisom@rpcgb.org); Tim Shotts; JR Malchus
Subject: RE: [External Email] Question concerning Fire Apparatus Access

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Jim I just responded back to you. Here is the text from that prior email:

As an addendum to my opinion, I was provided the attached email by Jesse Clifton, Fire Marshal for the City of Trussville, Alabama.

From a review of the issues raised by this email, it presents a conflict within the state code. The municipal planning commission retains its authority over all subdivision approvals within the municipality. However, the State Fire Marshal has its authority to enforce the fire code under 36-19-2 which allows for the enforcement of the fire code through its police power granted under its statute.

In 2012, the Alabama Court of Civil Appeals reviewed this conflict of laws under the case entitled *Ridnour v. Brownlow Homebuilders, Inc.*, 100 So.3d 554 (Ala. Civ. App. 2012). As part of its review, it acknowledged there was a conflict under state law between the regulatory powers of municipalities and counties and those of the State Fire Marshal:

“Harmonizing the various statutory and regulatory provisions together, as we are required to do, see *Ex parte Jones Mfg. Co.*, 589 So.2d 208, 211 (Ala.1991) (“Statutes should be construed together so as to harmonize the provisions as far as practical.”), we hold that only county commissions and municipalities have the power to adopt general residential construction and building codes but that the state fire marshal may adopt residential construction and building codes relating to fire prevention and protection applicable statewide that supersede the municipal and county codes to the extent they are inconsistent with the code adopted by the state fire marshal. See *Alabama Dep’t of Revenue v. Jim Beam Brands Co.*, 11 So.3d 858, 862-63 (Ala.Civ.App.2008).”

In effect, where an issue is covered by the fire code passed by the State Fire Marshal, it supersedes local governmental ordinance. In effect, this means the City of Trussville’s ordinance adopting the 2015 International Fire Code has been preempted by the adoption of this fire code and all appendices by the State Fire Marshal. Having said this, the question now becomes who is the party authorized to enforce the fire code adopted by the State Fire Marshal’s office? In my opinion, it is beyond the jurisdictional scope of the P&Z board to enforce the provisions of the state fire code, and more particularly Appendix D as it has not been adopted by the City of Trussville. However, failure to comply with the state fire code could place someone under the jurisdictional authority of the local fire marshal to exercise its police power and cite the violator with a violation of the state fire code. Therefore, the prudent course would be to inform the applicant that while there is no violation of any local ordinance, constructing the street in this manner could open the possibility of the person constructing to potential criminal liability under the state fire code. They should be advised to retain counsel of their own to review their options prior to proceeding. Please advise with any questions. Thanks.



Chesley P. Payne, Attorney

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From: Meads, Jim <jimmeads@sain.com>
Sent: Monday, November 14, 2022 12:19 PM
To: 'Benjamin Short' <bshort@trussville.org>; Jesse Clifton <jesse.clifton@trussville.gov>; Chesley P. Payne <cpayne@msnattorneys.com>
Cc: Dan Weinrib <dweinrib@trussville.org>; Wayne Sullivan <wsullivan@trussville.org>; Steve Turner <steveturner@kw.com>; Ralph Robson (robsoncontractorsinc@gmail.com) <robsoncontractorsinc@gmail.com>; Ryan Dawkins <rtdawkins@gmail.com>; Kris Reeves (kris@peakstoragegroup.com) <kris@peakstoragegroup.com>; Darrell Skipper <darrell@skipperinc.com>; Brett Isom (bisom@rpcgb.org) <bisom@rpcgb.org>; Tim Shotts <tim.shotts@trussville.gov>; JR Malchus <jmalchus@trussville.org>; Meads, Jim <jimmeads@sain.com>
Subject: RE: [External Email] Question concerning Fire Apparatus Access

Chesley:
Does the information in the email from Mr. Clifton change the City Attorney’s Advisory Opinion to the Planning & Zoning Board?

Thanks,

Jim Meads, P.E.
President/CEO

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Birmingham, Alabama 35243
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