

MOONEY LAW FIRM

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PHONE: 501-935-5847
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July 15, 1994



Hon. Hubert Brodell
Mayor
City Hall
314 West Washington
Jonesboro, AR 72401

Re: Mickey Seeman Pool Construction

Dear Mayor Brodell:

This will follow up my conversation with you of an earlier date wherein I informed you that I would be speaking for Mr. Mickey Seeman at the Council meeting on Monday night concerning his construction of his pool at his residence on a portion of the right of way of Higginbottom Creek.

After I learned of this matter, I have had an opportunity to investigate the facts and circumstances surrounding the construction of the pool and it is my information that much misinformation has come to the City Inspector's office and I wanted to get this straightened out.

I had the opportunity to visit with Brian about the matter and he informed me that Mr. Seeman had visited his office about the construction of the pool and that they had denied him permission to construct the pool on the right of way. Brian also told me that Mr. Seeman did not obtain a building permit and additionally that at least two and perhaps three pool people in the City of Jonesboro had refused to install the pool for him.

With reference to the building permit, Mr. Seeman obtained a building permit to build his residence on Lot 7, Block C of Windover Heights and he was of the impression as was the pool contractor that no additional permit would be necessary for the pool. Upon inquiring of pool contractors in Jonesboro, they were also under the impression that no permit was necessary to build a pool. My client is totally ignorant of the fact that a

permit was necessary in order to build the pool. He came to the City Hall for the purpose of getting permission to build on a portion of the right of way, not to get a permit. He informs me that a permit was never discussed with him. There is no question he was told that he could not build on the right of way and he had no intention of building the pool on the right of way.

Mr. Seeman has a farming operation here and down in South Arkansas. He had made arrangements to have the pool installed over the Memorial Day weekend and he was in South Arkansas working at this time. Prior to leaving for South Arkansas, he had marked the pool off on the ground and believed that he had placed his pool off of the Higginbottom Creek right of way. He did not know that he was building on the right of way and had no intention of building on the right of way. He had completed his measurements on the ground based upon the plat that he had of his property. He was not aware at all that he had built on the right of way until after he had Clay Kenward to do a survey of the lot and locate the pool. This was not done until June 9. Mr. Seeman was very surprised to find that he had actually built on the right of way as he thought that he had plenty of room to put the pool between the easement on the North and the Higginbottom Creek right of way on the South.

Brian seemed to think that Mr. Seeman deliberately built the pool in this manner. This is the furthestest thing from the truth. Brian had information that Arkansas Pools, Pools-R-Us and Jerry Whitlow had all three refused to build the pool due to the fact that Mr. Seeman wanted it built on the right of way. This is not true. I am attaching statements hereto from Arkansas Pools and Pools-R-Us and my client has talked personally to Jerry Whitlow on the phone. None of these people had refused to build the pool as had been reported to Brian.

I hope this information will help clear this matter up. Mr. Seeman will have spent over \$20,000 on the construction of this pool in a very high scale subdivision. He was building the pool for his family. Mr. Seeman recognizes that he has built on the right of way and also recognizes that he may have to move the pool. However, we would like to be able to complete the pool and use it until such time as Higginbottom Creek right of way may be needed.

Upon investigation of the Higginbottom Creek right of way, it appears that the right of way is over 100 feet across not including the 20 foot easement. In going upon the ground, you can readily see that Higginbottom Creek

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is on the South of the fence and that there is more than ample right of way for the widening, cleaning or construction in the Higginbottom Creek right of way. It is doubtful that the 20 foot easement would ever be used and it is certainly doubtful that as much of it would have to be used that would ever require removal of the pool. However, my client is ready, willing and able to enter into a agreement to move the pool, if necessary.

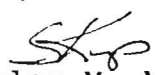
I am also attaching hereto a covenant that Mr. and Mrs. Seeman are agreeable to sign which guarantees that in the event that the City ever needs the easement that the encroachment of the pool would be immediately removed upon reasonable notice to them and that this agreement will be binding upon the heirs and assigns of Mr. and Mrs. Seeman and filed of record and become a covenant that runs with the land.

I trust and hope that the City Council will favor Mr. and Mrs. Seeman with a variance to permit them to use the pool and not require them to fill it up under the conditions and circumstances that it will be moved if the need ever arises.

Thank you very much for your consideration in this matter.

Cordially yours,

MOONEY LAW FIRM


Charles M. Mooney, Sr.

CMMsr:sc
Encls.

cc: ✓ Mr. Brian Wadley
MAPC Planning
City Hall
314 W. Washington
Jonesboro, AR 72401

Mr. Ron Kelton
P.O. Box 638
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Mr. Cecil Province, Jr.
653 W. Washington
Jonesboro, AR 72401

Mr. Fred Bowers
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Mr. Gene Vance
B.B. Vance & Sons
318 Southwest Drive
Jonesboro, AR 72401

Mr. Harold Perrin
Professional Management Consultants
2005 Highland Drive, Suite 1000
Jonesboro, AR 72401

Mr. Gary Harpole
906 Live Oak Circle
Jonesboro, AR 72401

Mr. Jim D. Hannah
Farmers Insurance Group
Indian Mall
Jonesboro, AR 72401

Mr. Donald Mullenix
Heritage Motors
3205 E. Nettleton
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Ms. Sharon Ingram
2408 Glenn Place
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Mr. Donnie Wise
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P.O. Box 56
Jonesboro, AR 72401

Mr. Grover Evans
1715 National Road
Jonesboro, AR 72401

Mr. Jerry D. Mays
3603 Viking
Jonesboro, AR 72401

Mr. & Mickey Seeman
2923 Martinbrook
Jonesboro, AR 72401

3413 Southwest Drive
Jonesboro, Arkansas 72401
501-935-1000



ARKANSAS POOLS & SPAS

JOHN PAYNE

This is to certify that
I have met Mickey Secman
for the 1st Time
July 13, 1994
John Payne

COVENANT

This covenant entered into by and between MICKEY SEEMAN and BEVERLY SEEMAN, hereinafter referred to as Landowners; and the CITY OF JONESBORO, hereinafter referred to as the City.

WHEREAS, the Landowners have constructed a swimming pool that is approximately four (4) feet on the City easement which runs along the South boundary line of Landowners' property; and

WHEREAS, the Landowners' property is described as:

Lot 7, Block C of Windover Heights, a Replat of Southridge Subdivision, Phase I, Jonesboro, Arkansas;

and

WHEREAS, the City agrees to permit the Landowners to encroach upon the easement with the specific condition and consideration that should the City ever have need for that portion of the easement upon which the Landowners are encroaching, that the Landowners will, upon reasonable notice, fill the swimming pool in at the Landowners' expense and remove the encroachment from the right of way easement.

This agreement is binding upon the heirs and assigns of the Landowners and will be filed of record and become

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a permanent covenant that runs with the land and will be binding upon any and all future owners.

WITNESS our hands and seals on this July _____, 1994.

Mickey Seeman

Beverly Seeman

LANDOWNERS

CITY OF JONESBORO, ARKANSAS

By _____
Hubert Brodell, Mayor

Attest:

Donna Jackson, City Clerk

STATE OF ARKANSAS
COUNTY OF CRAIGHEAD

On this day personally appeared before me, a Notary Public within and for the county and state aforesaid, duly commissioned, qualified and acting, the within named MICKEY SEEMAN and BEVERLY SEEMAN, who stated to me that they had executed the foregoing instrument for the considerations and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public on this July _____, 1994.

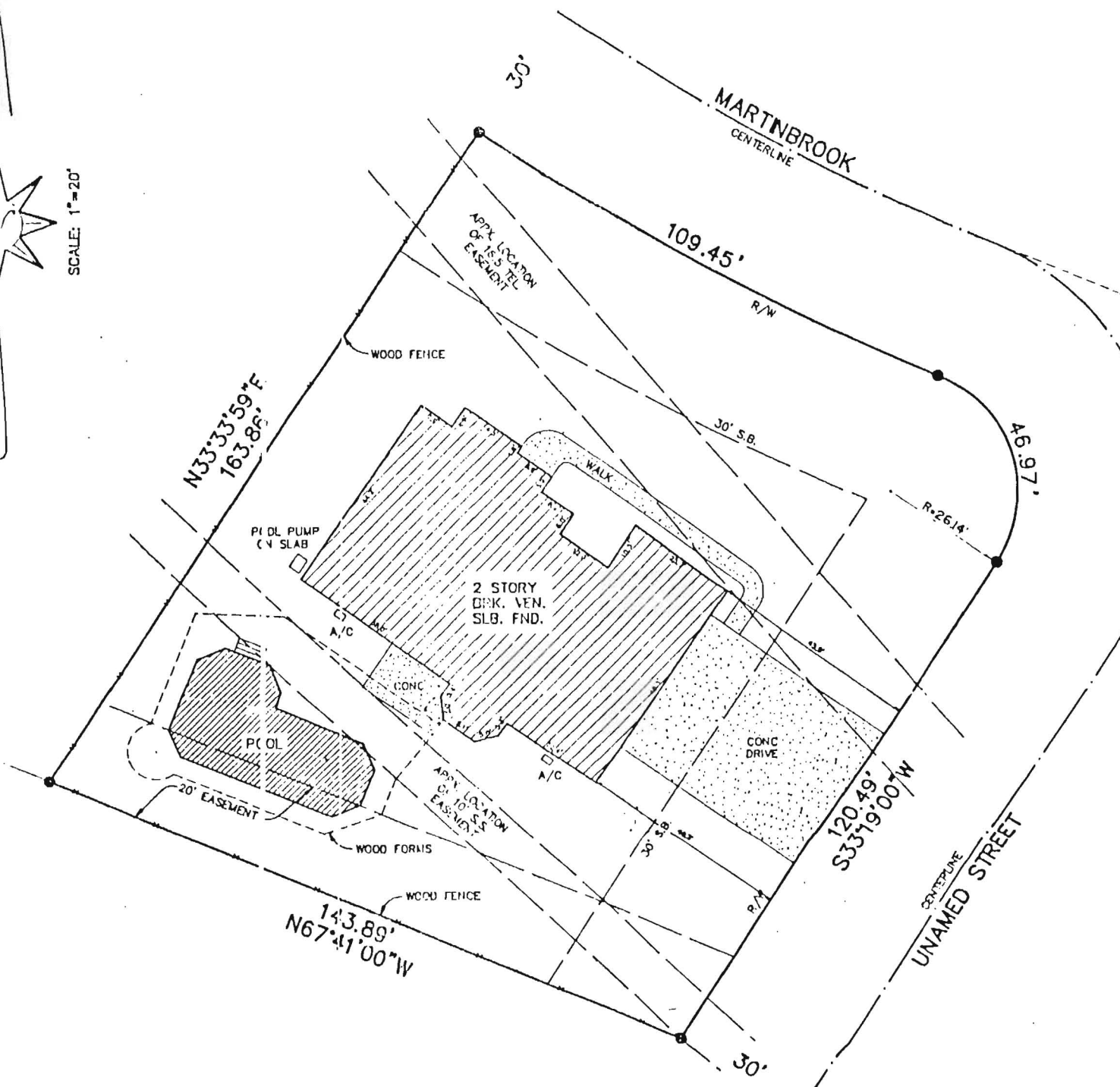
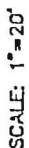
Notary Public

STATE OF ARKANSAS
COUNTY OF CRAIGHEAD

On this day, before me personally appeared HUBERT BRODELL and DONNA JACKSON, to me personally well known, who acknowledged that they were the Mayor and City Clerk of the City of Jonesboro, and that they, as such Mayor and City Clerk, being authorized so to do by the City Council of the City of Jonesboro, had executed the foregoing instrument for the purposes therein contained, by signing as such Mayor and City Clerk.

WITNESS my hand and official seal this July _____,
1994.

Notary Public



CLIENT: