

Transcript of the Testimony of

Tommy McNutt

Date: February 11, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

Fax: (501) 378-0077

<www.bushmanreporting.com>

	Exhibit No. 1 (McNutt Notice)	10
10	Exhibit No. 2 (Chamber Map)	13
	Exhibit No. 3 (2013 Proposed Street and Sidewalk) 13	
11	Exhibit No. 4 (Ward Map)	13
	Exhibit No. 5 (AHTD Map)	13
12	Exhibit No. 6 (3-17-80 Map)	14
	Exhibit No. 7 (Riverbend Site Plan)	14
13	Exhibit No. 8 (Corps of Engineers)	26
	Exhibit No. 9 (YouTube Paper Ad)	29
14	Exhibit No. 10 (75 Years Ago)	32
15	Exhibit No. 11 (12-14-04 Letter)	34
	Exhibit No. 12 (8-20-12 Letter)	35
16	Exhibit No. 13 (11-19-12 Letter)	37
	Exhibit No. 14 (River & Rail Project)	39
17	Exhibit No. 15 (5 Aug 2010)	40
	Exhibit No. 16 (1-29-15 Email)	42
18	Exhibit No. 17 (Exhibit E)	49
	Exhibit No. 18 (Photography)	54
19	Exhibit No. 19 (Photography)	54
	Exhibit No. 20 (Felkins Affidavit)	71
20		
	Exhibit No. 21 (GIF Grant)	90
21	Exhibit No. 22 (2012 Main Street Board)	98
	Exhibit No. 23 (Ozark Documentary)	103
22		
23	Exhibit Plaintiff's A (1940 Minutes)	156
	Exhibit Plaintiff's B (House Numbers)	158
24	Exhibit Plaintiff's C (Blueprint)	160

❖ ❖ ❖ ❖ ❖ ❖ ❖ ❖ ❖ ❖

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 5	Page 7
1 THE VIDEOGRAPHER: We are on the audio 2 and video record. Today's date is 3 February 11th, 2015. 4 The approximate time is nine a.m. 5 This is the video recorded deposition of 6 Honorable T.R. McNutt. This deposition is 7 being taken at 401 West Commercial Street, 8 Ozark, Arkansas. 9 Would the attorneys please make a 10 record of their appearance. 11 MR. BROCKETT: Christopher Brockett 12 for the Plaintiff. 13 MR. TUCKER: Scott Tucker and Jaime 14 Jones for Union Pacific Railroad. 15 THE VIDEOGRAPHER: Would the reporter 16 please swear the witness. 17 TOMMY RICHARD MCNUTT, 18 the witness hereinbefore named, having first been 19 duly cautioned and sworn or affirmed to tell the 20 truth, the whole truth and nothing but the truth, 21 testified as follows: 22 MR. BROCKETT: I would like to go 23 ahead and get on the record the same 24 stipulations. Deposition by agreement of 25 parties. All objections are reserved	1 Q. Let me go over some ground rules with you, and 2 you're doing a good job. Please answer "yes" or "no" 3 or out loud to one of my questions. 4 The court reporter cannot take down nods of 5 the head, and if you nod your head up and down or 6 left and right, I may have to ask you if that's a yes 7 or no. All right? 8 A. Sure. 9 Q. And if you would, try to say "yes" or "no" 10 rather than "uh-huh" or "huh-uh" because sometimes 11 later on in the transcript we may have a disagreement 12 about which word you said. And if you say "uh-huh," 13 I may ask you if that's a yes, and I'm not trying to 14 be rude. Okay? 15 A. Okay. 16 Q. The court reporter is taking down everything 17 that we say verbatim, which means that we both can't 18 be talking at the same time. 19 I'll do my best to let you finish your 20 answer to the question before I start a new one if 21 you'll do your best to let me finish the question 22 before you start answering. That will help us not 23 talk at the same time. Okay? 24 A. Yes. 25 Q. You understand that you've been placed under
Page 6	Page 8
1 except as to the form of the question. 2 MR. TUCKER: And responsiveness of the 3 answer. That will be fine. 4 EXAMINATION 5 BY MR. TUCKER: 6 Q. All right. Would you please state your full 7 name, sir? 8 A. Tommy Richard McNutt. 9 Q. Mr. McNutt, my name is Scott Tucker. I'm a 10 lawyer representing Union Pacific Railroad Company in 11 a case styled City of Ozark versus Union Pacific 12 Railroad Company, and I'm here to take your 13 deposition today because the Plaintiff's counsel, 14 Mr. Brockett, named you as a possible witness in this 15 case. Do you understand that? 16 A. Yes. 17 Q. Have you ever given a deposition before? 18 A. No, sir. 19 Q. Have you ever testified at a trial? 20 A. Yes. 21 Q. Tell me what -- how many times? 22 A. I'm a bail bondsman, and through the years I 23 have been involved in a few that's minor things, but. 24 Q. Have you ever been a party to a lawsuit? 25 A. No.	1 oath to tell the truth and the whole truth? 2 A. Yes. 3 Q. Just as if you were sitting in front of a judge 4 in a courtroom: right? 5 A. Yes. 6 Q. Let me have an agreement with you, Mr. McNutt. 7 If you don't hear one of my questions, will you 8 please ask me to repeat it? 9 A. Yes, sir. 10 Q. If you don't understand one of my questions, 11 will you please ask me to rephrase it? 12 A. Yes. 13 Q. Because we'll be relying upon the answers that 14 you give here today in your deposition in preparation 15 for the trial of this case, and if you answer a 16 question without asking me to repeat it or rephrase 17 it, I'm going to take it that you heard the question 18 and understood the question. Is that fair? 19 A. Yes. 20 Q. All right. Are you on any medications today 21 that would affect your ability to give truthful and 22 accurate answers in your deposition? 23 A. No. 24 Q. If at any time you realize, Mr. McNutt, that 25 you gave an incorrect answer sometime earlier in your

2 (Pages 5 to 8)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 9 1 deposition. will you please stop me and correct that 2 error? 3 A. Yes, sir. 4 Q. Even if it's something that may seem 5 insignificant. If later on we're talking about one 6 topic, and you realize something that you should have 7 added or may not have been correct in a previous 8 answer, please stop me and correct the record; okay? 9 A. Yes. 10 Q. Because we want to have an accurate transcript 11 as we can get. And this is not an endurance contest. 12 If at any time you want to take a break for any 13 reason, you need to make a phone call, you want to 14 stretch your legs, get a glass of water, whatever, 15 just let me know. Say, Can we take five minutes, and 16 we'll do that. 17 A. Yes, sir. 18 Q. The only thing I'll ask is that if a question 19 is pending to you at that time, that you answer the 20 question, and then we can take a break. Okay? 21 A. Yes. 22 Q. Do you have any questions about this process 23 before we get going? 24 A. I think I understand. 25 Q. All right, sir. Let me hand you what I'm going	Page 11 1 Q. Do you have any documents that would fit 2 category number one? 3 A. No, sir. 4 Q. All right. Turn to the page with me, if you 5 would, to look at the top. Let me read the 6 paragraphs on this page and see if you have any 7 documents that would fit these descriptions. 8 Number two says, Please provide a copy of 9 all documents, correspondence, email, reports that 10 you have sent or received from Union Pacific Railroad 11 Company or any representative of UP regarding access 12 to city property. Do you see that, Mr. Mayor? 13 A. Yes. 14 Q. Do you have any documents that would fit that 15 category? 16 A. Not that I know of. The actual crossing, no. 17 Q. Okay. Number three says, Please produce a copy 18 of all documents, correspondence, email, reports that 19 you have sent or received regarding the removal or 20 installation of a crossing in Ozark, Arkansas. Do 21 you see that, sir? 22 A. Yes. 23 Q. Do you have any documents that would fit 24 category number three? 25 A. No.
Page 10 1 to mark as Exhibit Number 1 to your deposition, and 2 it is the Notice of Deposition, and ask you if you've 3 been provided a copy of that. 4 (Exhibit No. 1 was marked.) 5 A. (Witness reviews document.) Yes, I have a 6 copy. 7 Q. All right, sir. And the Notice directs you on 8 page one to be present at the law offices of 9 Mr. Brockett on February 11 at nine a.m. And you're 10 hear, so you've complied with that part of the 11 Notice. 12 Let me ask you if you would turn to the 13 very last page. These are -- I'm sorry, the next to 14 the last page. My apologies. 15 There's a request at the bottom for 16 documents, and let me read the first one, if you'll 17 read along with me. 18 It says, Please produce a copy of all 19 documents, correspondence, email, reports that you 20 have sent or received from Union Pacific Railroad 21 Company or any representative of UP regarding the 22 removal or installation of a crossing in Ozark, 23 Arkansas. 24 Do you see that, sir? 25 A. Yes, sir.	Page 12 1 Q. Number four says, Please produce any diaries, 2 notes, or calendars you have kept or created 3 regarding any efforts to seek a crossing in Ozark, 4 Arkansas. 5 Do you see that? 6 A. Yes, sir. 7 Q. Do you have any documents that would fit 8 category number four? 9 A. I have some maps that I, people have gave me, 10 and I have collected about, you know, the city 11 streets in Ozark. 12 Q. Did you bring those with you today? 13 A. Yes, sir. 14 Q. Can we see those, please? 15 A. (Witness complies.) Do you want me to explain 16 anything about any of them? 17 Q. Well, why don't we mark them as exhibits just 18 for the record, so that we'll know what we're talking 19 about, and then I'll hand them back to you, and you 20 can tell me what they are. 21 A. Okay. 22 Q. All right. I will mark as Exhibit 2, it looks 23 like a pamphlet from the Ozark Area Chamber of 24 Commerce that says, Welcome to Altus, Denning, Ozark 25 and Wiederkehr Village from Ozark Area Chamber of

3 (Pages 9 to 12)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 13 1 Commerce. 2 (Exhibit No. 2 was marked.) 3 A. That name on there, Norman Powell, he was the 4 Ozark historian for many, many years. 5 Q. Okay. There is a two-page document, the first 6 page says, City of Ozark Base Map, and the second 7 page says 2013 Proposed Street and Sidewalk Work. 8 I'll mark this as Exhibit Number 3. 9 (Exhibit No. 3 was marked.) 10 A. Some of that might not -- this next map, that 11 just shows the wards of the city. I failed to -- I 12 don't think that would have anything to do with 13 the -- 14 Q. Okay. Well, since we've got it in front of us, 15 you're right. It says Ozark City Ward Map. 16 A. Right. 17 MR. TUCKER: I'll mark that as Exhibit 18 Number 4. 19 (Exhibit No. 4 was marked.) 20 MR. TUCKER: There is a document, one 21 page. It says Map of Ozark, Franklin 22 County, Arkansas. I'll mark that as 23 Exhibit Number 5. 24 (Exhibit No. 5 was marked.) 25 MR. TUCKER: There is a large	Page 15 1 BY MR. TUCKER: 2 Q. And, finally, there is a color document that 3 says City of Ozark Planning Area Study Map, and it 4 shows population densities. Would this have anything 5 to do with the crossing -- 6 A. I don't think so. 7 Q. -- or the lawsuit? 8 A. No, sir, I don't think so. 9 Q. All right, sir. I'll hand that back to you, 10 and thank you. 11 A. I should've went through it. 12 Q. It's all right. Mr. Mayor, I'm going to hand 13 you what's been marked as Exhibit Number 2. It says, 14 Welcome to Altus, Denning, Ozark, and Wiederkehr 15 Village from Ozark Area Chamber of Commerce, and if 16 you would, please just hold this, the front part up 17 to the camera, and then you can feel free to unfold 18 it. 19 Tell me what that is, if you would? 20 A. Okay this is a nap. I think it's 21 approximately, I'm thinking maybe 30 years old, and 22 it's -- it shows all of the streets in Ozark. It's 23 listing them. It's an index of the streets. 24 That's -- 25 Q. Okay. If I could see that.
Page 14 1 document, which appears to be a map of 2 Franklin County, Arkansas from the Arkansas 3 State Highway and Transportation Department 4 that we'll mark as number six. 5 (Exhibit No. 6 was marked.) 6 BY MR. TUCKER: 7 Q. Then we have, it looks like another map of 8 Ozark with some -- 9 A. That was a study plan map that -- actually, I 10 didn't know that was in there either, but it's a -- I 11 don't think you can tell. It's been marked over 12 there. 13 Q. Would this have anything to do with the 14 lawsuit, or the crossing, or anything that you would 15 want to refer to, Mr. Mayor? 16 A. No, sir. 17 Q. Okay. Why don't you just retain that, if you 18 would? 19 A. Sorry about that. 20 MR. TUCKER: Not a problem. The next 21 document says Main Street Ozark Riverbend 22 Marketplace Site Plan, so I will mark that 23 as Exhibit Number 7. 24 (Exhibit No. 7 was marked.) 25	Page 16 1 A. -- the only map I have that lists the streets. 2 Q. Does this -- what would we call this, a 3 pamphlet, or a flyer, or what, what -- 4 A. I guess it's just a flyer that the Chamber put 5 out back then. 6 Q. Do you know if it has a date on it anywhere? 7 A. I was just looking at the ads on the opposite 8 side there, and the businesses have been in and gone 9 out, and some of them have been good for 20 plus 10 years. So I'm just guessing it's 25 or 30 years old. 11 Q. Okay. It shows points of interest on the map, 12 such as Town Square, Old County Jail, Chamber of 13 Commerce, things of that nature. And I see it lists 14 city streets in the upper left-hand corner; is that 15 correct? 16 A. Yes. 17 Q. And I see there's an inset, which is an up 18 close section of the downtown city streets; is that 19 right? 20 A. Yes, sir, I -- I hadn't really paid a lot of 21 attention to it. In fact, I've just had this map a 22 couple of weeks. 23 Q. Where did you get it? 24 A. Latine Powell (phonetic), the widow of Norman 25 Powell. She called me and wanted me to come pick it

4 (Pages 13 to 16)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 17 1 up. She wanted me to have that. 2 Q. Was that in connection with the lawsuit or just 3 the fact that you're Mayor of Ozark, or someone she 4 knows? 5 A. It would be connected to the lawsuit. 6 Q. Okay. 7 A. If it's -- you know, that's what she thought. 8 Q. And do you know how it's connected -- can you 9 tell me how it's connected to the lawsuit? 10 A. Well, it doesn't show Oliver Street, and it's 11 got an index here to the upper right-hand corner, and 12 it's not listed. And she thought that might be 13 pertinent to what you wanted. 14 Q. Okay. Let me take a look at the index. You're 15 right, in the upper right-hand corner there is a 16 heading that says Street Index? 17 A. Yes. 18 Q. And it lists Austin, Barcliff Lane, Bell, 19 South, North, Bluff Drive in alphabetical order. It 20 lists the streets in Ozark; is that right? 21 A. Yes, sir. 22 Q. And then it goes, Oak to Owens, and if Oliver 23 Street were on here, it would be between Oak and 24 Owens? 25 A. Yes, I would assume.	Page 19 1 A. At the bottom. 2 Q. Okay. Thank you. And that lists a number of 3 the city streets; is that correct? 4 A. It lists the city streets on there, yes. 5 Q. Is Oliver Street shown on that map? 6 A. Not that I see it on there. 7 Q. If you'll turn to page two, what does it say 8 there at the top, sir? 9 A. That's Proposed Street and Sidewalk Work. That 10 was the project, I guess, is the reason the study map 11 is with this. 12 Q. And it says for 2013, is that right, on page 13 two? 14 A. Oh, okay. 2013, yes, sir. 15 Q. I take it the second page really wouldn't have 16 anything to do with the Oliver Street or the crossing 17 or the lawsuit; would it? 18 A. No. It's just attached to show that it is a 19 map that we used. 20 Q. Okay. And then you mentioned Exhibit Number 4 21 says Ozark City Ward Map; correct? 22 A. Yes. 23 Q. And it really doesn't have anything to do with 24 the lawsuit, but which ward would the land next to 25 the Arkansas river be?
Page 18 1 Q. And not only is Oliver Street not listed in the 2 Street Index, it doesn't appear to be shown in the 3 map in the upper left-hand corner; does it? 4 A. No, sir, it's not. 5 Q. Okay. Mr. Mayor, anything else about Exhibit 6 Number 3 that might be relevant to this case or 7 Oliver Street or anything that you can think of? 8 A. No, sir. 9 Q. All right, sir. Let me hand you what we've 10 marked for identification as Exhibit Number 3, which 11 is a two-page document. 12 The first page says City of Ozark Base Map, 13 and the second one says 2013 Proposed Street and 14 Sidewalk Work. Can you tell me what the first page 15 shows, other than just being a map? 16 A. It's just a map of the city, and it's kind of a 17 study planning map. We had some kind of project 18 going, and, anyway, that's basically the map that the 19 city uses like, you know, when we're doing certain 20 projects. 21 Q. Does that map have a date on it anywhere? I 22 couldn't tell. 23 A. 1994, November of '94. 24 Q. Where is that, Mr. Mayor? Where is the date on 25 it, if you can show it to me?	Page 20 1 A. It would be Ward 1. 2 Q. Who represents Ward 1? 3 A. Roxie Hall. Are you talking about the 4 alderman? 5 Q. Yes, sir. 6 A. Roxie Hall and Rex Anderson. 7 Q. Ms. Hall has part of it, and Mr. Anderson has 8 another part? 9 A. We have three wards, and with two aldermen in 10 each ward. 11 Q. All right. Thank you. You can put that in our 12 pile. 13 A. Okay. 14 Q. As a matter of fact, we might just set that on 15 the table so we don't lose anything. Let me hand to 16 you, Mr. Mayor, what we've marked as Exhibit Number 5 17 to your deposition, and it says Map of Ozark Franklin 18 County, Arkansas. 19 It looks like the date in the lower 20 right-hand corner is August 2009. Can you look at 21 that and confirm that for me, sir? 22 A. Where did you see the date? 23 Q. Very low in the right-hand corner. It's small. 24 A. (Witness reviews document.) Sorry. I don't 25 see it.

5 (Pages 17 to 20)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 21 1 Q. Here let me point it to you. I'll draw a, put 2 a pink dot -- 3 A. Oh, okay. 4 Q. -- right to the left of it. Do you see that it 5 says August 2009? 6 A. Oh, okay. Yeah, I see it now. 7 Q. All right. Sir, it's real small. I barely see 8 it. It's very small. 9 A. Okay. 10 Q. And you brought that map with you today. Does 11 that show city streets in Ozark? 12 A. It shows all of the city streets, yes. 13 Q. Does it does an Oliver Street on that map? 14 A. Not that I see. 15 Q. Okay. You can put that in our pile, if you 16 would. 17 A. (Witness complies.) 18 Q. Exhibit Number 10 is a map of -- 19 MS. JONES: Six. 20 MR. TUCKER: I'm sorry. Pardon me. I 21 misread that. Thank you. 22 BY MR. TUCKER: 23 Q. Exhibit Number 6 is a map of Franklin County; 24 is that right? 25 A. Yes, sir.	Page 23 1 on the other side of the river or something. 2 Q. This was originally -- I think it was the idea 3 for what I'm going to call the big marina? 4 A. Yes. 5 Q. And the -- 6 A. In the early stages of their plans. 7 Q. And you said it had been scrapped, and now it's 8 going to be moved to the south side of the river? 9 A. Well, there's works of a marina to go in on the 10 south side of the river. 11 Q. Is, is that going forward? Is there actually 12 going to be a marina on the south side of the marina, 13 or is it contingent on certain things? 14 A. Well, I think it's pretty much contingent on 15 the lawsuit. Well, it could be. Of course they have 16 options, you know, anyway, they are waiting to see, 17 which everybody is about, what's going to happen 18 here. 19 Q. When you say they are waiting to see, who is 20 "they"? 21 A. Well, the city and everybody -- the people 22 that's proposed the marina, they're very interested 23 in it. 24 Q. It looks like, letter b, can you see that. It 25 says. Railroad Crossing Tower?
Page 22 1 Q. And that's such a large map, it can't have much 2 detail in it. Does that really have any bearing on 3 Oliver Street, or grade crossing, or this lawsuit, 4 and if so can you tell me what? 5 A. Well, I collect these maps, kept them, you 6 know. Well, and, anyway, I don't see a crossing on 7 the railroad in that area. 8 Q. And, Mr. Mayor, what is the date of that map? 9 Can you look and see? 10 A. It's dated -- it says Field Inventory, 1971, 11 Photo Revised, 1984. 12 Q. Okay. Thank you. If you could put that in 13 that stack of exhibits. 14 A. (Witness complies.) 15 Q. Let me hand to you what's been marked as 16 Exhibit Number 7. It says Main Street Ozark 17 Riverbend Marketplace Site Plan. If you could tell 18 me what that is, sir? 19 A. This is a study sheet that the Main Street 20 used, I think when they first started talking about 21 the Riverfront. 22 And it just shows that the riverfront was 23 on the north side of the river there, and that was 24 all the things that they had proposed to build. But 25 I think that's been scrapped and probably going to go	Page 24 1 A. Okay. That's very small print. I can't read 2 that, but -- okay, yeah, that's -- they had proposed 3 to be on the west side of the museum. There's going 4 to be an elevated, over the tracks, down type thing. 5 Q. A pedestrian overpass? 6 A. Yes, I guess. Yeah, it would be pedestrian. 7 Q. And you said yes, the museum. When you say 8 "the museum" are you talking about the old train 9 depot? 10 A. Yes, sir. 11 Q. And is that what Ozark uses the train depot now 12 is for a museum? 13 A. A museum, yes, sir. 14 Q. And then it looks like the, in Exhibit Number 7 15 the train depot is marked as letter L. Can. can you 16 see that, sir? 17 A. Okay. Okay. The depot is L, yes. 18 Q. Okay. And is that document dated, by the way? 19 A. I think that's a date there. I'm not sure. 20 Can you -- 21 Q. Let's see. I see a phone number, but I don't 22 see a date. It looks like I might have to get a 23 magnifying glass for me to see it. 24 A. I was thinking the same thing. 25 Q. It looks like it says OGM or AGM. Do you know

6 (Pages 21 to 24)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 25	Page 27
1 who prepared this? 2 A. Main Street. It's got their letterhead, 3 signature on it there. 4 Q. Okay. Let's continue to look at the categories 5 of documents that were in the, the Notice. I think 6 the last one I read was number four. 7 So let's look at number five. It says. 8 Please produce any diaries, notes, or calendars 9 you've kept or created regarding any contact with 10 Union Pacific or its representatives. Do you see 11 that, Mr. Mayor? 12 A. Yes, uh-huh. 13 Q. Do you have any documents that would fall into 14 that category? 15 A. I think way back there when I contacted Charlie 16 Felkins I think I dated that. I don't know if it was 17 in this. I think it would be in this. 18 Q. Yes, sir. And if it's going to take a while 19 for you to look through it, we can go off the record 20 and give you time to thumb through those documents. 21 A. Okay. It's -- I should have it here. 22 MR. BROCKETT: Let's go off the record 23 for a minute. 24 THE VIDEOGRAPHER: We are going off 25 the record. It's 9:24 a.m.	1 BY MR. TUCKER: 2 Q. Mr. Mayor, can you help me there and tell me 3 what, what those documents or notes say that would be 4 relevant to our case here? 5 A. Okay. I think what this was, when I was trying 6 to get information on, about the railroad and things, 7 and some of this stuff I'd got off the internet. 8 And I was trying to make contact with the 9 railroad and Corps of Engineers, and I just got phone 10 numbers. And I'd kind of educate myself on some of 11 the federal laws and what have you. 12 And, actually, I haven't even looked at 13 this, some of this stuff, in a long time, but, 14 anyway, that's basically what it is. 15 Q. Okay. You had mentioned Charlie Felkins, is 16 that someone that you spoke with? 17 A. Yes. I had spoke with him a few times back 18 in -- oh, I think that started in '08 or somewhere 19 around -- the years are -- oh, '11, I guess it was. 20 Q. And Charlie Felkins was an employee at the time 21 of Union Pacific? 22 A. Yes. 23 Q. And I believe he is based in Little Rock? 24 A. Yes. 25 Q. And do you remember the nature of y'all's
Page 26	Page 28
1 (Short break) 2 THE VIDEOGRAPHER: We are back on the 3 record. It's 9:29 a.m. 4 BY MR. TUCKER: 5 Q. Mr. Mayor, you were looking through your 6 briefcase there while we were off the record to see 7 if you had any documents that might fall under 8 category number five about things pertaining to 9 contact with Union Pacific or its representatives, 10 and I believe you may have found something. Is that 11 right? 12 A. Yes. I have documents of people I had contact, 13 contacted and -- anyway, it was in April, it looks 14 like, of 2011. 15 Q. Okay. May I see that for just a second? 16 A. And I think those railroad people are different 17 things I just scratched down as notes. 18 Q. I believe there's a total of 15 pages, if I 19 counted properly. There are some notes written on 20 the back, and some notes on the front of the pages. 21 I'll mark it for identification as Exhibit Number 8, 22 and I'll put this somewhere where I won't cover 23 anything up. 24 (Exhibit No. 8 was marked.) 25	1 discussions during those times? 2 A. Well, I didn't know anything about what was 3 going on, and, of course, all we'd heard is just part 4 of it. So I just wanted information for myself. 5 And I called, and they got Charlie's number 6 off the internet, along with these others, and, you 7 know, engaged in conversation with him, if he could 8 kind of tell me what was going on. 9 Q. And what did he tell you? 10 A. Well, basically he told me it wasn't, the side 11 that I knew about it wasn't -- there's another side 12 to it, you know. 13 And he said he had told Sandy Key that, 14 early right up front, that she couldn't cross there 15 on a surface level crossing, was the main thing that 16 he advised me. 17 Q. All right. You pulled out another document 18 that's on the table. Is that -- 19 A. Okay. You had asked if I had contacted any 20 other people at the railroad. This Raquel Espinoza I 21 talked to her two or three times, and she was 22 director of corporate relations with Union Pacific. 23 And this Mr. Halsted, Mr. Patrick Halsted, 24 I've got his address and all of that for some reason. 25 And that's a YouTube thing there that, a

7 (Pages 25 to 28)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 29 1 video that the city had made, and I just had the 2 address to look that up on it, but if you want to. 3 Q. Do you remember -- I don't think I'm going to 4 need to mark this as an exhibit. What you passed me 5 is an envelope, and it's got, it looks like, a cutout 6 from a newspaper? 7 A. Yes. 8 Q. And it says Main Street Ozark, Thank you Matt 9 Ferrell of MDF Productions, and it says, The YouTube 10 video you did for us was awesome. It told the real 11 truth about Union Pacific Railroad and its treatment 12 of Ozark. 13 Let me go ahead and mark that as Exhibit 14 Number 9. 15 (Exhibit No. 9 was marked.) 16 A. I didn't know that was -- I forgot about that 17 even being in there, but anyway, that's -- 18 Q. It continues by saying, Everyone please view 19 the video link before and share with all of your 20 Facebook, Twitter, and email friends across the 21 country. You can help Ozark regain what's rightfully 22 ours, and then it has a link at the bottom. Is that 23 Exhibit Number 9? 24 A. Yes. This was in the local paper, newspaper, 25 The Spectator.	Page 31 1 Omaha, Nebraska, I see his name and address on there. 2 Did you ever talk with Mr. Halsted, that you can 3 recall? 4 A. Yes. When they were -- when they came to Ozark 5 I talked to him, and I don't know about the -- I 6 talked to another -- when they were in Ozark. 7 Q. If you would, leave Exhibit Number 9 out. 8 rather than putting it back in the envelope. 9 A. All right. 10 Q. But you can retain the envelope in your 11 records. Let's look at the last category on the 12 Notice of Deposition, which is number six, if you 13 will follow along with me, sir. 14 It says, Please produce all diaries, notes, 15 calendars you have from any council meetings 16 regarding the removal or installation of a crossing 17 in Ozark, Arkansas. 18 Do you see that? 19 A. Yes. 20 Q. Did you have any documents that would fall 21 under category number six? 22 A. Not to my knowledge, I don't think. 23 Q. Okay. Mr. Mayor, I see that you've brought a 24 folder there, and I don't know if, if it's got things 25 in it that are related to this lawsuit or not, but
Page 30 1 Q. The YouTube video, and I've seen it, was that 2 sponsored by Main Street Ozark? 3 A. Yes. 4 Q. And are they the ones who paid for it? 5 A. From what I understand. 6 Q. Did, did the city pay for any part of the 7 production of the -- 8 A. No. 9 Q. Okay. And, Mr. Mayor, you handed me the 10 envelope that has Raquel Espinoza's name and phone 11 number. Did you speak with Ms. Espinoza? 12 A. Yes, I have spoken with her. 13 Q. Can you tell me the gist of those 14 conversations? 15 A. I really don't remember, other than she was 16 just updating me and, you know, what the -- I think 17 she had contacted me about what was going, you know, 18 council meetings and things. 19 Q. Okay. 20 A. I think when they were coming here that she was 21 one of them that, the four that came here. When they 22 were invited to the council meeting, that she was a 23 contact, I think. The best I remember, that's how... 24 Q. Okay. And then the name of Mr. Patrick 25 Halsted, Director of Industry and Public Projects in	Page 32 1 can you -- you tell me what, what we have in there? 2 A. Okay. This is part of the exhibits. Are y'all 3 going to retain this stuff? 4 Q. Only to make copies. The originals -- 5 A. It doesn't make any difference to me. 6 Q. The originals will be returned to you. 7 A. This is just a copy of a, 75 years ago that 8 states in there that the railroad and the city was 9 kind of in a little problem with the trash haulers 10 back then. 11 Everybody -- you know there was a lot of 12 trash haulers. We didn't have the system we have 13 today, the -- and they would haul the trash down to 14 the dump, and they got it pretty messed up down 15 there. And the railroad stopped them from crossing 16 down there at the... 17 Q. All right. And this -- at the top of the page, 18 well, let me just mark this as Exhibit Number 10. 19 (Exhibit No. 10 was marked.) 20 BY MR. TUCKER: 21 Q. The top of the page says it's The Spectator. 22 That's the newspaper for Ozark. Is that -- 23 A. Ozark newspaper, yes, sir. 24 Q. And it says The Spectator, Ozark, Arkansas 25 Wednesday, January 15th, 2014, at the top?

8 (Pages 29 to 32)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 33	Page 35
1 A. Yes. 2 Q. And then it says, 75 years ago in The 3 Spectator. So, let's see, what's 75 years before 4 2014? 5 A. I think we figured it, like, 1938 or something 6 like that, wasn't it, or am I -- there was a lot of 7 discussion when that came out. 8 Q. Okay. All right. We will put that in our 9 stack. What else do you have there, Mr. Mayor? 10 A. This is a letter that -- 11 MR. BROCKETT: Thirty-nine. 12 Q. That was 1939? 13 A. Okay. 14 Q. That was close. I couldn't do it in my head. 15 A. This was sent from Ozark, and it was sent to 16 Scott Bennett. And I see, I think -- yeah, Mr. Coley 17 was the mayor then, and they were wanting that street 18 back. Anyway, they -- he called it Owens Street, so. 19 Q. Okay. 20 A. So that's... 21 Q. Yeah, this letter is dated December 14, 2004, 22 written by Mr. Coley as mayor of the City of Ozark at 23 the time? 24 A. Yes. 25 Q. To Mr. Scott Bennett, Arkansas Highway	1 Q. -- our crossing or the railroad, I'll just hand 2 that back to you. 3 A. Yeah, I should have gone through this better. 4 Q. That's okay. 5 A. This is just a letter that, that the railroad 6 had sent Carol -- let me see if this is the letter to 7 start with. 8 Yeah, this is the letter that Carol 9 Sneath -- I don't know. Y'all probably have all of 10 this, but she had sent to the railroad wanting, about 11 the Oliver Street. And that was the letter that the, 12 that the railroad answered her back and explained all 13 of the things to her. 14 Q. Let's see. What you've handed me is a 15 five-page document, and I think we have this, but in 16 case we need to refer to it, I'll mark it as Exhibit 17 Number 12. 18 (Exhibit No. 12 was marked.) 19 BY MR. TUCKER: 20 Q. Page one is a letter dated August 20, 2012, 21 from Carol Sneath, S-n-e-a-t-h, who was the mayor at 22 the time of Ozark? 23 A. Yes. She was the mayor prior to me, I think. 24 Q. And you took office in January of 2015? 25 A. Yes, sir.
Page 34	Page 36
1 Department. It consists of five pages, even though 2 the letter is just the first page; is that right? 3 A. That's the main thing, the letter, yes. 4 (Exhibit No. 11 was marked.) 5 Q. Okay. You can put that in our stack there. 6 A. Yeah. Did I lose some of that other stack? 7 Q. It's being copied. 8 A. Oh, okay. All right. And a lot of this may 9 not have anything to do. I just gathered up -- all 10 this is Main Street. 11 It's probably -- James Gilmer used to be 12 the, over the Main Street, and his main objective 13 back then was the museum, sidewalk, crepe myrtle, 14 historic street lights, and pocket park, and that was 15 Main Street's -- early on I used to be on the Main 16 Street board. 17 Q. What years were you on the Main Street board, 18 Mr. Mayor? 19 A. Gosh I -- I'd have to think back. I don't 20 remember when. It was early on when the Main Street 21 first started. It was, let me think, in the 22 nineties. 23 Q. All right. Since I don't think this pertains 24 to our -- 25 A. No.	1 Q. And how long is the term? 2 A. Four years. 3 Q. And this is a letter written to Mr. Charlie 4 Felkins, and then page two and three of Exhibit 5 Number 12 is a letter from -- well, it's dated 6 September 27, 2012, from Mr. Patrick Halsted to Mayor 7 Sneath. Is that correct? 8 A. Yes, sir. 9 Q. Okay. Then it looks like the next two pages is 10 a letter on Union -- from Union Pacific, Thad Call, 11 to Mayor Sneath dated February 11, 2013. Is that 12 right? 13 A. Yes, sir. 14 Q. Okay. We can just put that in our pile of 15 exhibits for now. 16 A. This is a letter from Representative, State 17 Representative Leslee Post, and she just sent me the 18 law that she had found about the, who makes the 19 decision on the railroad crossings, and -- 20 Q. And that -- 21 A. -- I had highlighted that when she sent it to 22 me. That was the big thing back then is nobody was 23 sure who was, who was on, who was what, so. 24 Q. All right. I'll make that as Exhibit Number 25 13.

9 (Pages 33 to 36)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 37	Page 39
1 (Exhibit No. 13 was marked.) 2 Q. And it looks like eight pages. The first two 3 appear to be an opinion from the Attorney General of 4 Arkansas to State Representative Leslee Post -- 5 A. Yes. 6 Q. -- dated November 19, 2012? 7 A. Yes, sir. 8 Q. Okay. Can you read the highlighted section 9 there on the first page of Exhibit Number 13, please? 10 A. Yes, sir. Hence all rules for removing or 11 establishing railroad crossings must be analyzed 12 according to the regulations of the federal agency 13 known as surface transportation board, which is the 14 entity Congress vested with the regulatory authority 15 over these matters. 16 Q. All right, sir. Pages two and three in 17 Exhibit -- 18 MS. JONES: Three and four. 19 Q. I'm sorry, three and four on Exhibit 13, it 20 looks like it might have been printed off the 21 internet. It says, Train derailed in Louisiana, about 22 a hundred homes evacuated? 23 A. Yes. A lot of this stuff I just collected, you 24 know, I thought might -- to more or less educate 25 myself, you know, about what goes on with trains and	1 Exhibit 13 I've received before. It appears to be a 2 letter from the Federal Railroad Administration to 3 Mayor Sneath. It looks like it's dated November 13 4 of 2012, or perhaps was received then. Is that 5 right? 6 A. Yes. 7 Q. Okay. All right. Mr. Mayor, do you have any 8 other documents that you brought with you today that 9 would pertain to the lawsuit, or the crossing, or the 10 railroad tracks? 11 A. Well, this is just something, you know, like 12 when there were first study sessions about a wish 13 list, I guess, of what it would cost and what the 14 railroad would pay and all of that. 15 Q. And it says Main Street Ozark River and Rail 16 Project. 17 A. I don't think I... 18 Q. Was this list compiled by Main Street Ozark? 19 A. Yes. And I think the total was like 93,000 20 that they were going to, hoping the railroad would 21 pay their part of it, or something. 22 Q. Okay. We'll go ahead and mark that as Exhibit 23 Number 14. 24 (Exhibit No. 14 was marked.) 25
Page 38	Page 40
1 situations like that, and... 2 Q. Okay. So let -- page five would be a letter 3 from Mayor Carol Sneath to a Ms. Sue Woolsey 4 (phonetic) dated April 30, 2013? 5 A. Yes. That's the, a different thing there. 6 That's a collector's street up there. That wouldn't 7 have anything to do with -- 8 Q. Okay. 9 A. -- this. 10 Q. And then there's -- the next page says -- 11 A. Same thing. 12 Q. -- review of appraiser's examination. Why 13 don't I take those two items out of our exhibit, 14 since they don't pertain to anything about the 15 railroad or -- 16 A. Yeah. 17 Q. -- and I'll -- 18 A. Sorry I wasn't better -- 19 Q. That's okay. 20 A. -- prepared. 21 Q. I will hand back to you the letter from 22 Ms. Sneath to Sue Woolsey and the document that says 23 review appraiser's examination. 24 A. Okay. 25 Q. And then it looks like the last two pages in	1 A. And this is, I guess, Main Street Riverfront 2 Update. This is how they would propose a 3 cantilevered boardwalk on the north side, and they 4 were talking about elevated crossing on River Street. 5 And that's really a -- I don't know what's, they 6 would have. 7 Q. The highlighted section says. Elevated crossing 8 from River Street to boardwalk on Arkansas River. 9 Desired location west, or east, of old Franklin 10 County Jail. 11 Was that the pedestrian tower, you think -- 12 A. Yes. 13 Q. -- that we talked about earlier? 14 A. Yes, I think. That was early on in the... 15 Q. Okay. We'll mark that as Exhibit Number 15. 16 (Exhibit No. 15 was marked.) 17 Q. And it -- at the top of the page it says 5 18 August 2010. Do you see that? 19 A. Yes. 20 Q. And then it says Main Street Riverfront Update. 21 Does this appear to be a document that would have 22 circulated just in Main Street Ozark, or did it go to 23 the city council, or do you know? 24 A. No, it was just in the Main Street study 25 session type of thing, general meeting that, you

10 (Pages 37 to 40)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 41 1 know, they -- I would think -- I'm sure that's what 2 that is. 3 Q. And it consists of two pages? 4 A. Yes. 5 Q. Okay. All right, sir. What else do you have? 6 A. This is, you know, like I was getting things 7 off the internet, just to, like I say, just to 8 educate me about the federal laws and what have you 9 about the railroad. That's probably. 10 Q. Okay. I'll let you keep that. 11 A. Okay. And this is a council meeting, and I'd 12 made a motion to send a formal letter to the railroad 13 requesting a representative to come before the 14 council to address the council. And it took me over 15 a year to get where I could get the railroad to come 16 to Ozark. 17 Q. And that's -- 18 A. I was denied that request. 19 Q. Okay. 20 A. Until finally we, you know, they did come. 21 Q. Okay. I'll let you keep that. 22 A. Yes. That's just a recent thing from, about 23 the Corps of Engineers, and this is just the... 24 Q. When you say a recent thing about the Corps of 25 Engineers, can you describe that a little more fully	Page 43 1 Q. When you say concerned about what's going on 2 over there, are you talking about the railroad tracks 3 and whether or not -- 4 A. The marina, yeah. 5 Q. Are you talking about on the south side or the 6 north side? 7 A. On the south side. 8 Q. Okay. 9 A. And did you want me to read what -- 10 Q. No, sir. I think that will suffice. You can 11 put that in our pile. 12 A. Yes. 13 Q. Do you have any other documents that -- 14 A. This is just a thing that we all got. This -- 15 well, I guess this is when Chris went to Little Rock, 16 the deposition that he gave them. 17 Q. Let me look at that real quickly. Okay. This 18 is the transcript of the hearing before Judge Brooks, 19 December 11, 2014. It looks like Mr. Brockett may 20 have sent that to y'all. 21 A. Yes. 22 Q. Okay. We have a copy of that, so -- 23 A. Yeah. 24 Q. -- I'll hand that back to you. 25 A. Like I say, some of this stuff I -- and I guess
Page 42 1 or tell me what it says? 2 A. Okay. I -- the -- I met with the Corps and -- 3 in fact, they came through Ozark. Is that the one? 4 Q. It looks like what you have handed me is an 5 email from a Jason Gramlich? 6 A. Yes. 7 Q. Is he with the Corps of Engineers? 8 A. Yes. 9 Q. And it's sent to, it says Ozark's mayor. That 10 would be you? 11 A. Yes. 12 Q. All right. And I haven't had a chance to look 13 at this, but is, is this in reference to the marina 14 that's proposed on the south side of the river? 15 A. Yes, sir. 16 Q. Okay. And I'll mark that as Exhibit Number 16. 17 (Exhibit No. 16 was marked.) 18 Q. Without reading the entirety of the email into 19 the record, can you tell us basically what it says? 20 A. Well, they, the Corps was -- there's a Colonel 21 Paul with the Corps of Engineers, and Randy Hathaway, 22 and Mr. Bosco (phonetic) he's over the Corps 23 property, and I believe it's Mr. Nichols. You know, 24 they were all concerned about what's going over there 25 on the -- and --	Page 44 1 that's... 2 Q. Do you have any documents in your briefcase 3 that you brought that would pertain to the street, or 4 the crossing, or anything pertinent to the lawsuit? 5 A. No, I think that's pretty much it. Most all of 6 this is just -- well, some of it there you have, like 7 that, but it's -- it's just things that I have got 8 off the internet, different -- I mean, you are 9 welcome to -- 10 Q. No, if -- 11 A. I don't think it would have any... 12 Q. Okay. Let me get just a little background 13 information from you, Mr. Mayor. What's your date of 14 birth, please? 15 A. August 11th of 1945. 16 Q. And how old does that make you? 17 A. Well, 69. I'm getting on up there. 18 Q. Where were you born? 19 A. In Poteau, Oklahoma. 20 Q. Where did you grow up? 21 A. We moved here in 1962, so I have been here 53 22 years. 23 Q. How old were you in '62 when you moved here? 24 A. Fifteen, 16. 25 Q. Did you graduate from high school in Ozark?

11 (Pages 41 to 44)

Tommy McHutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 45	Page 47
1 A. Yes. 2 Q. What year? 3 A. Sixty-three. 4 Q. Do you have any other formal education? 5 A. I went to College of the Ozarks, COO, two years 6 of college. 7 Q. Did you obtain a degree? 8 A. No. 9 Q. Tell me, where do you work? 10 A. Where do I work? 11 Q. Yes, sir. 12 A. I'm Mayor of Ozark. 13 Q. Is that a full-time position? 14 A. Yes. 15 Q. Does it -- 16 A. More than full-time. 17 Q. Do you do that every day is -- 18 A. Yes. 19 Q. -- what I'm saying. 20 A. Yes, full-time. 21 Q. What are your hours? 22 A. Well, eight to four-thirty. Of course it's a 23 lot -- that's -- it's a lot more than that, though. 24 Q. Sure. You work a lot of times past 25 four-thirty?	1 Q. Where do you currently live? 2 A. I live at 845 North Third, here in Ozark. 3 Q. Is that in the downtown area? 4 A. Yes. 5 Q. I'm not real familiar with the streets. 6 A. From the stoplight, 219, it's just up towards 7 the interstate. 8 Q. How long have you lived there? 9 A. Five years. 10 Q. And where did you live before that? 11 A. Oh, we lived on Market Street for five years, 12 and then, in Ozark. And then we lived on Puddin 13 Ridge up there for 25 years. 14 Q. Okay. 15 A. And when I was growing up we lived on Main 16 Street, which is just by the railroad track down 17 there, when we was -- when I was in school that's 18 where we lived. 19 Q. About how close to the train depot was it? 20 A. Oh, 150, 200 yards, I guess. 21 Q. Pretty close, then? 22 A. Pretty close, yeah. 23 Q. Could you walk out your front door and back 24 door and see the train depot and the tracks? 25 A. Well, no, at the time there was buildings
Page 46	Page 48
1 A. Oh yeah. 2 Q. Is it Monday through Friday? 3 A. Yes. 4 Q. Do you have any other jobs or businesses? I 5 think you -- 6 A. I still have a bailbonds license, but I don't 7 write many bonds. My wife, she's took that over for 8 what we did do. 9 Q. Before you became Mayor of Ozark did you run 10 the bailbond company? 11 A. Yes. 12 Q. And what's the name of it? 13 A. Bailbond Financing. That's the name of the 14 company. I'm just an agent. Our company is in Pine 15 Bluff, Arkansas. 16 Q. And you mention your wife's name. What is -- 17 you said your wife runs the, the company now. What 18 is her name? 19 A. Barbara, Barbara Jean. 20 Q. Mr. Mayor, have you ever served in the 21 military? 22 A. Yes. I retired out of the Guard twenty-two and 23 a half years. 24 Q. That would be the Army National Guard? 25 A. Yes.	1 there, but I could -- yeah, they -- they couldn't 2 see -- there used to be Hillard, the old Hillard 3 Hatchery, I think. 4 Of course they tore those old buildings 5 down, but we lived just one block over from the 6 railroad tracks. 7 Q. How old were you, did you say, when your family 8 moved to Ozark? 9 A. Fifteen or 16. It's probably closer to 16, I 10 guess, because I was a junior in high school. 11 Q. Were you driving at the time or riding a 12 bicycle, like I did? 13 A. Well, I got my license when we were here in 14 Ozark, so -- probably when I was -- well, I think I 15 was probably a senior then. Back then you didn't get 16 your license like they do now, so. 17 Q. Okay. And what year was it that your family 18 moved to Ozark. You mentioned it -- 19 A. Sixty-two, 1962. 20 Q. We've been going now for about an hour. Why 21 don't we just take a five-minute break. 22 A. That's fine. 23 THE VIDEOGRAPHER: We are going off 24 the record. It's 9:58 a.m. 25 (Short break)

12 (Pages 45 to 48)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 49 1 THE VIDEOGRAPHER: We're back on the 2 record. It's 10:09 a.m. 3 (Exhibit No. 17 was marked.) 4 BY MR. TUCKER: 5 Q. Mr. Mayor, we just took a short break, and I 6 passed to you what we've marked for identification as 7 Exhibit Number 17 to your deposition. Do you have 8 that in front of you, sir? 9 A. Yes. 10 Q. And that is a transcript of an audiotape of a 11 meeting of the Ozark City Council. The cover page 12 says December 5th, 2014, but that's actually when it 13 was transcribed. I believe Mr. Brockett and I agree 14 it was a January 13, 2014, meeting. 15 MR. TUCKER: Correct? 16 MR. BROCKETT: That's correct. 17 MR. TUCKER: Okay. 18 BY MR. TUCKER: 19 Q. And the typist has a number of places where it 20 says "Unknown Male" and "Unknown Female," and do you 21 see where there are handwritten entries on who the 22 speakers were? 23 A. Yes. 24 Q. And I believe Mr. Brockett told me that 25 Ms. Sandy Key wrote down who was speaking where it	Page 51 1 It just doesn't make sense to me, and that's the 2 bottom line, is safety. 3 Q. And when you say "safety," I think I know what 4 you mean, but let's visit about that for a moment. 5 Is it envisioned that if the crossing were to go back 6 in that people would walk across the crossing? 7 A. That's what I envision. 8 Q. And when you say "safety," I take it that you 9 foresee the risk of a train striking a pedestrian? 10 A. Yes, or a vehicle, either one, because. 11 Q. And you probably know just from common sense 12 and being around for 69 years that when a train 13 strikes a pedestrian or a vehicle it can often result 14 in serious injury or death? 15 A. Yes. 16 Q. When you said "safety," would that also 17 encompass the possibility of trains derailling there 18 if the crossing went back in? 19 A. That's been brought up a lot in discussions, 20 you know, that would be a catastrophe, yes. 21 Q. And in this location where the proposed 22 crossing would go in, just to the east of there 23 there's a pretty sweeping curve? 24 A. Yes. 25 Q. Okay. And I don't -- have you ever worked for
Page 50 1 says "Unknown Male" and "Unknown Female"? 2 MR. BROCKETT: That's correct. 3 Q. Okay. Mr. Mayor, if you would, turn with me to 4 page four. Do you see the second entry where it 5 says, McNutt? It's the second line at the top of the 6 page. 7 A. Yes. 8 Q. Will you read what's typed there? 9 A. I think we need to drop this lawsuit. 10 Everybody is sick of it. 11 Q. And, of course, this was in January of 2014 at 12 the city council meeting, but at least as you're -- 13 at that time it was your opinion that the lawsuit 14 should be dropped; is that right? 15 A. Yes. 16 Q. Is that still your opinion today? 17 A. Yes, more or less. I don't think it's -- yes. 18 Q. Okay. And I was going to ask, what's the basis 19 for your opinion that the lawsuit ought to be 20 dropped? 21 A. Well, I think it's a safety factor, the bottom 22 line. I mean, there's a lot of reasons, but the 23 bottom line, I just don't think it's safe to invite 24 the public down to a place like that, you know, with 25 a lot of trains, high speed trains go through there.	Page 52 1 a railroad, or do you have any railroad experience at 2 all? 3 A. No. I have friends that worked, retired 4 friends. 5 Q. I think both parties agree, and I don't know if 6 you know this, that, that anytime a train applies its 7 emergency brakes, even if it's on straight track that 8 the train runs a risk of derailment? 9 A. Yes. 10 Q. Have you been made aware of that? 11 A. Yes. 12 Q. And are you also aware, Mr. Mayor, that if a 13 train applies its emergency brakes while it's in a 14 curve that that increases the chances of a derailment 15 over and above what it would be on a straight track? 16 A. I would think common sense it would be. 17 Q. And in this location in downtown Arkansas (sic) 18 there are places where the Arkansas River is real 19 close to the railroad tracks? 20 A. Yes. 21 Q. I think we had a survey done, and I believe it 22 got as close, maybe, as -- the river got as close as 23 maybe 15 to 20 feet from the tracks. Does that sound 24 about right -- 25 A. Yes.

13 (Pages 49 to 52)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 53 1 Q. -- at certain places? 2 A. Yes. 3 Q. And when you said safety, and we've talked 4 about derailments, I take it one of your concerns is 5 if there was a derailment, and a car carrying 6 hazardous materials were to, to be breached and the, 7 whatever it's carrying, be it chloride, or whatever 8 hazardous material, might be released into the air? 9 A. That's concerns -- it's been discussed in 10 meetings that we've had. 11 Q. And would that be a concern -- 12 A. Yes. 13 Q. -- of yours? 14 A. Yes. 15 Q. Would it also be a concern of yours if a train 16 derailed and a car carrying hazardous materials 17 breached and went into the Arkansas River? 18 A. Yes, that would be a big concern. 19 Q. It would be a severe environmental 20 contamination; would it not? 21 A. Yes. 22 Q. And if the crossing went back in, and we've got 23 vehicles and pedestrians going over the crossing, 24 there might be times where somebody tries to cross 25 it, and is either not paying attention or is trying	Page 55 1 about it. It's -- I'm thinking no more than two 2 years ago. 3 Q. When you say "the mayor," are you referring to 4 Ms. Sneath? 5 A. Yes. She's the one that said she had them 6 ordered when she was -- channel five, I think, was 7 doing a story on it, and she had told them that she 8 had them ordered. And shortly after that they 9 appeared up down there. 10 Q. We're in January 2015. Sorry. We're in 11 February 2015 right now, so do you think it was in 12 early 2013 that those signs went in, approximately? 13 A. I think so. I'm not for sure, but it hasn't 14 been that long since then. 15 Q. And were you on the city council at the time? 16 A. Yes. 17 Q. Was there a vote taken to put those up, or did 18 Mayor Sneath -- 19 A. She. 20 Q. -- just do that on her own? 21 A. She did that on her own. 22 Q. Now in the transcript it says, We need to take 23 those embarrassing signs down, or there was actually 24 just one; right? 25 A. Yes.
Page 54 1 to beat a train, and the train might have to apply 2 its emergency brakes to avoid the accident? 3 A. Yes. 4 Q. Okay. 5 A. I think so. 6 Q. Okay. Look with me at the next entry on page 7 four where it says McNutt. Will you read that 8 paragraph for me? 9 A. And I -- and we need to get rid of -- and I 10 think we need to take that Oliver embarrassing sign 11 down. It's ridiculous. People -- people are -- I 12 hear every day about this lawsuit. We can't win. 13 Q. When you say the Oliver Street embarrassing 14 sign, I think I know what you mean, but just for 15 purposes of identification I want to pass you what 16 I've marked as Exhibit Numbers 18 and 19. 17 (Exhibit Nos. 18 and 19 were marked.) 18 BY MR. TUCKER: 19 Q. And are those pictures of the Oliver Street 20 crossing that went in sometime within just the past 21 few years? 22 A. That's it, yes. 23 Q. Do you know, Mr. Mayor, when that street sign 24 that says Oliver Street went in? 25 A. The mayor ordered those when we were talking	Page 56 1 Q. And tell me why you thought it needed to be 2 taken down. 3 A. Well, it's not a -- as far as the time being, 4 it's, it's -- there's not a street there, and, 5 besides, a lot of people is concerned that relayed to 6 me that if somebody is going down there at night and 7 saw that street sign, they might turn up in there or 8 something and get hung up on the railroad track or 9 something, which, you know, it's not very probable, 10 but it could happen, you know. 11 Q. That was a safety concern? 12 A. A safety concern, yes. 13 Q. Okay. Look down to the bottom, if you would, 14 Mr. Mayor, of page four, that transcript in Exhibit 15 17. 16 And if you'll read the paragraph or that 17 entry -- I'm sorry -- that begins at the bottom of 18 page four -- 19 A. Okay. 20 Q. -- and goes to the top of page five. 21 A. I talked to the Corps, and they said that they 22 went back through their records as far as they could 23 go before the river, and there was never an Oliver 24 Street, and the railroad said the same thing, and 25 then here we are.

14 (Pages 53 to 56)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 57	Page 59
1 Q. So you talked to the Corps of Engineers, if I'm 2 reading this correctly, and they said, We don't have 3 any record of there being an Oliver street; is that 4 right? 5 A. Yes. 6 Q. And you said the railroad said the same thing. 7 Would that have been Mr. Felkins or someone else? 8 A. I think that was Raquel Espinoza, I believe -- 9 I'm not sure, but I think -- I'm just almost sure of 10 that. 11 Q. Now, you've lived in Ozark since 1962? 12 A. Yes. 13 Q. Let's see. We're in 2015. If I do the math 14 right, that's 53 years? 15 A. Yes. 16 Q. When, when you came to Ozark do you remember 17 there being an Oliver Street, named as such, that 18 went across the railroad tracks somewhere in that 19 area of the depot? 20 A. No. 21 Q. Since you came to Ozark in 1953, do you ever 22 remember a street going across the railroad tracks 23 near the depot named Oliver Street? 24 A. Not named Oliver Street. 25 Q. Was there a road that you can recall at	1 those tracks there -- 2 A. Yes. 3 Q. -- when you moved here -- 4 A. Yes. 5 Q. -- in 1953? 6 A. Sixty-two. 7 Q. Sixty-two. I'm sorry. It's been 53 years -- 8 A. Yeah. 9 Q. -- since you've been here. I apologize. If I 10 say something wrong -- 11 A. Yeah. 12 Q. -- please correct me. 13 A. Yeah. Yeah, you said that just before that, 14 but. 15 Q. I apologize. 16 A. But, anyway, it's '62 is when we moved here. 17 Q. For the past 53 years? 18 A. Yes. 19 Q. Okay. The road that you're talking about that 20 went across the tracks, it did not have a name to it, 21 no street sign that you recall? 22 A. No. 23 Q. Was it, was it gravel, dirt, asphalt? What 24 type of road was it? 25 A. It was just an old dirt sandy road. And I
Page 58	Page 60
1 sometime that, that did go across the tracks? 2 A. Yes. There's a road that went over the tracks 3 to the dump down there when we moved here. 4 Q. And was it to the east of the depot? 5 A. East, yes. 6 Q. And do you have an approximation about how far 7 east of the depot? Are we talking like a hundred 8 yards or a couple of hundred yards, something like 9 that? 10 A. I was thinking it kind of, off of Bell Street, 11 but, you know, since -- I think it may have been -- 12 I'm not real sure. 13 I have been on it many times because we 14 lived down there by it, and I used to go down there 15 and shoot my -- I have shot many boxes of .22 shells 16 down there, so, but. 17 I, I can see the crossing, but I was 18 thinking it was in the vicinity of Bell Street. 19 Q. Okay. And you know the mainline track of the 20 Union Pacific Railroad? 21 A. Yes. 22 Q. That would be to the north, and there is a 23 siding also called a storage track -- 24 A. Yes. 25 Q. -- that's closer to the river. Were both of	1 worked at The Spectator when I was in high school, 2 the newspaper office, and on Thursdays after the 3 paper come out on Wednesday, well, my job was to take 4 all of the trash and things down there. 5 And I got stuck down there once in my 6 boss's station wagon, which I got in trouble over 7 that. But, but, anyway, it was a lot of mud holes 8 and all of that, you know, and a lot of times you 9 couldn't even get down the road. 10 Q. You said it was like a dirt road? 11 A. It was a dirt sandy road, just... 12 Q. The, the part of the road that went across the 13 tracks, was it constructed of dirt, or asphalt, or 14 boards, or do you remember? 15 A. It was boards. It was asphalt planks or slabs 16 like they used to stack them in, in between the 17 tracks, because a friend of mine took them out down 18 there. 19 Maxie Helmert worked for the railroad. He 20 has since then retired, but he remembers the day 21 that, you know, that they were -- I think he is one 22 of the -- you are going to have a deposition from 23 him, I think, later on. 24 Q. Maxie who? 25 A. Helmert?

15 (Pages 57 to 60)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 61 1 Q. Helmer? 2 A. Helmer. 3 Q. Helmer. H-e-l-m-e-r-t? 4 A. Yes, sir. 5 Q. And it's my understanding that the crossing was 6 removed in approximately 2001. Is that what 7 Mr. Helmer did? 8 A. Yes, sir. Yes. 9 Q. When we're going from the town side, which 10 would be north, across the tracks, we'd be going 11 south? 12 A. Yes. 13 Q. When, when the road was there and the asphalt 14 planks were there between the tracks, as soon as you 15 got over the second track on that dirt road did the 16 road go straight into the river, or which, which 17 direction did the road -- 18 A. It took a left and went on down. It passed the 19 gas tanks and then on around to the dump. 20 Q. About how long was that road once you get 21 across the second set of tracks? How far did it go 22 down? 23 A. Well, that's kind of -- it's been a long time, 24 but it was quite a little ways, because, like I said, 25 you know, I used to walk down there. I don't know, a	Page 63 1 because -- but, you know, there wasn't that much 2 traffic, but I don't remember cross -- you know, 3 passing anybody. 4 Q. Back then, let's say in the 1960's, earlier 5 sixties, you said you worked for The Spectator? 6 A. Yes. 7 Q. And you would take trash down there? 8 A. Yes. 9 Q. Were there houses down there on that street on 10 the south side of the tracks? 11 A. Yes, there was -- there was an Oliver family, a 12 black lived there, and then Sam Collins lived -- 13 Barry Collins was his dad's name, and Sam was about 14 my age, and we'd visit back and forth. 15 Q. Were there any businesses down there at the 16 time? 17 A. Not at the time, you know. I think maybe early 18 on I've heard there were businesses down there, but 19 that was -- I don't know when that was. That was 20 before my time. 21 Q. When was it that the city stopped using that 22 location on the south side of the tracks for a dump; 23 do you remember? 24 A. Whenever the city started their trash service. 25 You know, back then everybody had a burn barrel, and
Page 62 1 quarter of a mile, maybe, down. 2 Q. And was it a city dump that was open to the 3 public? 4 A. Yes. That was before the city had the trash 5 service, and a lot of people dumped then. 6 Q. Now was that before the McClellan-Kerr 7 navigation project, which brought the Ozark river 8 pool up? 9 A. Yes. 10 Q. The crossing itself that you mentioned, the 11 asphalt planks, was it -- 12 A. Creosote planks. Creosote, just -- 13 Q. Oh, creosote? 14 A. Creosote, yeah. 15 Q. Okay. Like creosote crossties? 16 A. Like the ties, but they were just long boards 17 that stood up, you know, where the -- the best I 18 remember now. 19 Q. Okay. 20 A. And that's what Maxie, you know, I talked to 21 him. That's what he -- 22 Q. Was it -- Mr. Mayor, was it, back then was it 23 wide enough for one car, or was it wide enough for 24 two cars going in opposite directions to go over? 25 A. Probably just one car, best I remember,	Page 64 1 the city outlawed, you know, that you can't burn 2 trash. 3 And so the trash service, I don't remember 4 who the first one was. DC Trash does it now, but 5 that's when all of that started and stopped at the 6 dump. Also the laws changed then, you know, about 7 the river. I don't remember the exact dates, but. 8 Q. Did the city stop using the dump before the 9 inundation of the river when they brought the pool up 10 with McClellan-Kerr, or was it just at the same time? 11 A. It was about in that time there, but I don't 12 think it had anything to do with each other. It's 13 just time -- 14 Q. Just coincidental? 15 A. Clean the, clean city up, you know, type of 16 thing. 17 Q. Do you recall approximately what year it was 18 that the Corps of Engineers flooded the Ozark pool? 19 A. I think it was the early seventies. It might 20 have been '72 or somewhere in there, the best I 21 remember. 22 Q. And when, when the Corps of Engineers did that, 23 did that also flood the land on which those houses 24 sat -- 25 A. Yes.

16 (Pages 61 to 64)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 65

1 Q. -- south of the river?

2 A. Yeah, they would all be underwater.

3 Q. I believe the Corps condemned that property,

4 and I didn't know if the houses were torn down, or if

5 they just flooded up through them and let the river

6 take care of it?

7 A. I can't remember. Sam would know, the boyhood

8 friend of mine.

9 Q. What is his name?

10 A. Sam Collins. He's still living. He's still

11 around here.

12 Q. Here in Ozark?

13 A. Yes. And I asked him about that, you know,

14 about the street, and I asked him if he ever heard of

15 Oliver Street, and he said he had never heard of

16 Oliver Street.

17 And I asked him if the city maintained it,

18 and he said nobody ever maintained it. And he said

19 he remembered one time or maybe two there was a road

20 grader down there, and then I said, It was probably

21 election time.

22 And, anyway, it's got turned around now

23 that the county kept the road up and graded it twice

24 a month, and that's not -- absolutely not true.

25 Q. And that's what I was going to ask you. Do you

Page 66

1 recall the city or anyone doing any maintenance on

2 that road that went across the tracks back then?

3 A. No.

4 Q. At any time?

5 A. Not that -- no.

6 Q. Even during the time period that the crossing

7 was taken out in 2001 for several years before that

8 do you recall anyone doing any maintenance on the

9 road leading up to the tracks?

10 A. No. I, I asked Ralph McKinney, and he was the

11 mayor back then. And he is 86 years old now, and, of

12 course, his mind is not as good as it used to be, but

13 he said he had never heard of Oliver Street. He said

14 that was back then no man's land, you know, even back

15 then when the people lived down there and all of

16 that, so.

17 Q. After the river pool came up, did it wash away

18 the road on the south side of the tracks?

19 A. Well, it's underwater. I think most of it is.

20 Q. And that's what I was asking.

21 A. Yeah, I think that's pretty much...

22 Q. And you mentioned the maps we looked at earlier

23 that we made exhibits to your deposition. None of

24 those referenced an Oliver Street; did they?

25 A. No.

Page 67

1 Q. This, this dirt road that went over the tracks

2 back when it existed before the McClellan-Kerr

3 navigation project flooded it, do you know if it was

4 ever a city street, or was it just something that

5 people turned on to and went down there to the dump?

6 A. It's just a road to the dump is all I -- that's

7 all we ever called it.

8 Q. Did you call it a name, like dump road, or did

9 it have any nickname?

10 A. No. It was just down to the dump is all I...

11 Q. And after the road and those houses on the

12 south side of the tracks got flooded, did anybody use

13 that road anymore on the south side of the tracks, to

14 your knowledge?

15 A. No. The only thing when those gas tanks were

16 there, I think they went down there until they had to

17 move them. And that was probably about the time, I

18 guess, they flooded it, but that's underwater now

19 also. The best of my knowledge it is.

20 Q. And I'm -- instead of just every time saying

21 the McClellan-Kerr project and inundation of the

22 Ozark pool, I'm just going to call it the flood.

23 Will you know what I'm talking about --

24 A. Yes.

25 Q. -- when I say that? Okay. So after the gas

Page 68

1 tanks were removed south of the tracks, is it fair to

2 say that there was no public use for the street after

3 the flood?

4 A. No, there was no -- nothing down there.

5 Q. No public use?

6 A. No.

7 Q. Is what I, is what I said correct?

8 A. Yes, that's correct.

9 Q. Okay. If you will, Mr. Mayor, turn with me to

10 page eight of that transcript in Exhibit 17. Well, I

11 take that back. Let's go to page seven, if you'll go

12 back just one page. Do you see at the bottom where

13 it says T.R. McNutt?

14 A. Yes.

15 Q. If you'll read that paragraph, please.

16 A. Sandy, you told me, this council from day one

17 that the railroad was behind it. They were all for

18 it, and the Corps was all for it also. The Corps was

19 all for it, yeah.

20 Q. And if you'll turn to page eight. The next

21 entry attributed to you says. Well, no, it's not in

22 the minutes.

23 And Ms. Key before that had said, Well,

24 you'll have to show me the minutes. What

25 specifically were you referring to when you said it's

17 (Pages 65 to 68)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 69 1 not in the minutes? 2 A. Okay. That's when I said that, that she had 3 come to the council in 2008, I think, and when this 4 all started -- I don't know if that -- and she said 5 that Charlie Felkins, and she had talked to them, the 6 railroad and the Corps, and they was all for it. 7 And she was trying to secure \$319,000, 8 which she did, or monies for the Riverfront, and the 9 matching grants and things. 10 And, anyway, she, I know twice, came to the 11 council and said that the railroad was all for it and 12 was excited about it and all of that. 13 Q. Are you talking about reinstallation of the 14 crossing and the downtown, or the Riverfront project? 15 A. The riverfront project, and, and about, you 16 know, getting permits to cross and all of that. And 17 that's when I started investigating it and called the 18 railroad and the Corps. 19 Q. And then it looks like Ms. Key said, You'll 20 have to show me the minutes, and you said, It's not 21 in the minutes. 22 A. She denied that she ever said that, and, of 23 course, it's not in the minutes that I know of. 24 Q. Is it common sometimes for discussions to take 25 place at city council meetings not to make it into	Page 71 1 Q. Okay. 2 A. I'll clarify that. 3 Q. Let me hand you what I am going to mark as 4 Exhibit Number 20, which is an Affidavit of Charlie 5 Felkins in this case. 6 (Exhibit No. 20 was marked.) 7 MR. TUCKER: Let's go off the record 8 for just a couple of minutes and let Mayor 9 McNutt read that. 10 THE VIDEOGRAPHER: We're going off the 11 record. It's 10:37 a.m. 12 (Short break) 13 THE VIDEOGRAPHER: We are back on the 14 record. It's 10:39 a.m. 15 BY MR. TUCKER: 16 Q. Mr. Mayor, in looking at the Affidavit of 17 Charles Felkins, if you'll look at paragraph two, and 18 read along with me while I read that into the record. 19 It says, In approximately 2000 an 20 individual living near the depot in downtown Ozark 21 called me several times to complain, even angrily, 22 about the fact that the trains blew their whistles as 23 they approached the crossing immediately south of the 24 depot. 25 This gentleman complained that no one used
Page 70 1 the minutes? Does that happen sometimes? 2 A. It should be in the minutes, but sometimes, 3 evidently, it wasn't in there. 4 Q. Looking down a little bit farther on that page, 5 Mr. Mayor, it's attributed to you, if you will read 6 along with me. It says, Charlie Felkins told me that 7 he told you from day one, he said, I told that Sandy 8 Key she's not crossing the railroad. Do you see 9 that? 10 A. Yes. 11 Q. Do you recall when that conversation was that 12 you had with Mr. Felkins? 13 A. When I first called him and -- what year? It 14 was -- didn't we have that documented on that other 15 thing there? 2011? No, it would be before -- 2008, 16 I guess it was. Yeah. 17 But it was the first -- well, here it is. 18 I -- no, that's when I called Joe Craig. First of 19 August, 2011. So it had to be in the same time. 20 Q. Okay. 21 A. I knew I had a date on there somewhere. That's 22 when I talked to Charlie Felkins. But Charlie said 23 he told Sandy she wasn't crossing the railroad at a 24 grade level crossing, not just crossing, but grade 25 level was what the discussion was all about.	Page 72 1 the crossing and asked that the railroad remove the 2 crossing. 3 Did I read that correctly? 4 A. Yes. 5 Q. Do you know who Mr. Felkins was referring to 6 when he says in 2000 an individual living near the 7 depot called to complain about no one used the 8 crossing and wanted the railroad to remove it; do you 9 know who that would be? 10 A. Yes. I don't know his name. James Hugh Gilmer 11 that we were talking about was over the -- James 12 Gilmer that used to be over Main Street. It was his 13 son-in-law. 14 Chris might know. His wife worked at the 15 bank. Do you know who I'm talking about? She 16 married -- 17 MR. BROCKETT: I don't know. I've 18 heard the name of person, but I don't -- 19 A. It's Mary Francis' son-in-law, and -- anyway, 20 that's -- I could find out, but that's who it was. 21 Q. Mary Francis Gilmer's son-in-law? 22 A. Yes. She lives over there now in that house 23 where, where he lived. They moved on, I think, to 24 Fort Smith or somewhere. 25 Q. The son-in-law?

18 (Pages 69 to 72)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 73 1 A. The son-in-law and wife, his wife. 2 Q. Which would be her daughter? 3 A. Yes. 4 Q. Okay. Did that -- did the son-in-law ever make 5 those type of comments to you, that trains are 6 blowing their horns, and -- 7 A. He came to the council and asked the council to 8 declare that a quiet zone, I think, and not blow the 9 whistle. 10 And the council voted five to one to make 11 it a quiet zone, and I voted against it, because I 12 like to hear the train whistle. But I didn't see 13 the, you know -- the reason he complained is because 14 he just moved in there. 15 It's like when we moved there. You know, 16 for a week or two or something, you know, I guess it 17 could be disturbing, but after you live there a while 18 you don't ever notice. You know, you never notice 19 it. 20 Q. Do you recall when the son-in-law came to make 21 that request of the council? 22 A. It was about in that timeframe, I think, of -- 23 we -- I can find -- I can look back on the records, 24 but that was... 25 Q. If the crossing was removed in 2001, it would	Page 75 1 Q. And do you recall from that point forward that 2 trains would come through Ozark and not blow the 3 horns, because it was a quiet zone? 4 A. Yeah, shortly after that I remember them down 5 there working, taking it out, and they quit blowing 6 the horn. 7 Q. When you say "taking it out," you mean taking 8 the crossing out? 9 A. Removing the crossing, yes. 10 Q. Did it actually have crossbuck signs at the 11 crossing? 12 A. There was, yes. 13 Q. Okay. Did it say Railroad Crossing, like -- 14 A. Yes. 15 Q. Okay. 16 A. I think I know where that crossing is at. 17 Q. You mean the signs? 18 A. The sign, yeah. 19 Q. Where would, where would the signs be? 20 A. Bat Coley's house. I noticed behind his 21 house -- I think he's retired from the railroad. 22 Q. What's his, what's his name? 23 A. Bat Coley. I think he was the mayor back 24 before Todd. He's got a crossbuck thing in there in 25 his backyard.
Page 74 1 have been sometime prior to that? 2 A. Somewhere in that timeframe. 3 Q. Okay. 4 A. And from what I understood, to make it a quiet 5 zone they had to move those crossbucks down there, 6 and then when -- that's when the -- that all kind of 7 happened, I think, at the same timeframe that they 8 removed the, the crossing. 9 Q. So help me out here. If I'm understanding this 10 right, the son-in-law whose name we're not sure of at 11 this point basically said, That whistle bothers me -- 12 A. Can't sleep, yes. 13 Q. -- I want us to declare the area a quiet zone, 14 which means trains won't be blowing their horns -- 15 A. Yes. 16 Q. -- in Ozark past, I guess -- did y'all just 17 take a vote or pass an ordinance to say We declare 18 that to be a quiet zone? 19 A. I guess probably a resolution, but we voted on 20 it, yes. 21 Q. And then do you know what happened after that? 22 Did somebody contact the railroad and say, We don't 23 want trains to blow their horns there anymore? 24 A. I assume that's what happened. Todd Timmerman 25 was the mayor then.	Page 76 1 MR. BROCKETT: Isn't Bat dead? 2 THE WITNESS: Huh? 3 MR. BROCKETT: Isn't Coley dead? 4 THE WITNESS: Yeah, he's dead. 5 MR. BROCKETT: Okay. 6 THE WITNESS: But his relatives live 7 there. 8 BY MR. TUCKER: 9 Q. But you said Mr. -- 10 A. But that's -- I don't know that for sure. 11 Q. Okay. You said Mr. Timmerman was the mayor at 12 the time that the son-in-law came and said, Listen, 13 I'd like to make this area a quiet zone. 14 A. Yes. 15 Q. And even though you voted against it, you said 16 it was five to one in favor of making the area a 17 quiet zone? 18 A. Yes. 19 Q. And was Mr. Timmerman then given authority by 20 the city council to contact the railroad about this 21 resolution and making it a quiet zone? 22 A. Yes. 23 Q. And in order to make it a quiet zone, not only 24 did railroads -- well, you understand when a railroad 25 approaches a public grade crossing it's got to sound

19 (Pages 73 to 76)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 77 1 the horn? 2 A. It's mandatory, yes. 3 Q. Yes, sir, that's, that's state law. Did you 4 understand that when Mr. Timmerman went to the 5 railroad and wanted to make this area a quiet zone 6 that not only would the crossbuck signs come out, but 7 that the, the crossing itself would come out? 8 A. Yeah, I didn't realize at the time if that was 9 a correlation between them, but it all happened about 10 the same time, so I just assumed that's what 11 happened. Now I couldn't, couldn't testify to that 12 in any way. 13 Q. If you will, look with me -- well, at paragraph 14 three of Charlie Felkins' affidavit it says -- I'll 15 read it if you'll read along with me. Shortly after 16 those complaints I received a call from the Mayor of 17 Ozark. I believe that his name was Todd Timmerman. 18 The mayor reiterated the complaints from 19 the previous gentleman, stated that no one used the 20 crossing, and requested that the railroad remove the 21 crossing. 22 Do you see that? 23 A. Yes. 24 Q. Other than what you've told me about the 25 son-in-law requesting the quiet zone and the, the	Page 79 1 Mr. Felkins' affidavit close by, but let's go back to 2 page 17 of that transcript from the, the city council 3 meeting. 4 I'll read the last paragraph of that page 5 where it says, McNutt, if you'll read along with me. 6 It says, Todd Timmerman put in a letter to the 7 council down at the other place, and it's a courtesy 8 letter from the railroad to say they were closing 9 that. And about that time we requested it be a quiet 10 zone, and they took the crossarms out. 11 Do you see that, Mayor McNutt? 12 A. Yes. 13 Q. Can you tell me, when you said Todd Timmerman 14 put in a letter to the council down at the other 15 place, first of all, was the other place a different 16 meeting place than you have now? 17 A. No. The city hall used to be downtown behind 18 the Bank of Ozarks, and we moved up there to the old 19 Garen building where we're at now. And I was 20 referring when we had our council meetings down at 21 the old place, I guess you'd call it. 22 Q. Okay. And you mentioned Todd Timmerman, it 23 says, put in a letter to the council. It's a 24 courtesy letter from the railroad to say they were 25 closing that.
Page 78 1 resolution that the board passed, do you know 2 anything about Ms. -- what did Mr. Timmerman say 3 about, if you know, about any of the conversations 4 that he had with Charlie Felkins and what those 5 discussions might have been? 6 A. Yeah, I wouldn't know anything about that. 7 Q. It says in paragraph three, The mayor stated 8 that no one used the crossing, and I -- during that 9 time period I'm assuming that you would agree with 10 that? 11 A. Yes. 12 Q. And it says, And requested the railroad remove 13 the crossing. 14 Did you have knowledge that Mayor Timmerman 15 was going to request the railroad to remove the 16 crossing? 17 A. Say that again. 18 Q. Before Mayor Timmerman asked the railroad to 19 remove the crossing, did you know that he was going 20 to do that? 21 A. No. The only -- when I knew, the council knew 22 that they were going to remove the crossing was at a 23 council meeting he brought that up. He had a letter 24 from the railroad. 25 Q. And that's what I, I wanted to ask you. Keep	Page 80 1 Was that a letter from the railroad saying 2 they were going to close the crossing? 3 A. Okay. What I remember about the meeting -- as 4 I said, it's been a while -- I'm not sure -- it was 5 right at the end of the meeting, and I remember I was 6 standing up, and Todd said, Oh, one more thing. I 7 forgot to mention it. I've got a courtesy letter 8 here from the railroad, and we're going to take out 9 that crossing. Anybody have any comments or 10 anything? And nobody said anything. 11 But I think we had adjourned, but, now, to 12 the best of my knowledge. I mean, I -- it's -- I'm 13 not sure that we -- but the fact that I remember 14 being standing up, you know, it, it would have had to 15 have been a motion to adjourn and second before we 16 good got up. 17 So I'm thinking it might, it might have 18 been after, you know, we adjourned, and he just 19 forgot to mention the letter. 20 Q. Do you know who the letter was from? 21 A. He just said the railroad, to the best of my 22 knowledge. 23 Q. Okay. 24 A. I haven't even thought about that. 25 Q. That's fine.

20 (Pages 77 to 80)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 81 1 A. But it was from the railroad. I know that. 2 Q. Did you ever see the railroad? 3 A. Just in the envelope, yeah. 4 Q. In his hand? 5 A. Yeah. And nobody was concerned about it 6 because at the time, you know, it just wasn't a, 7 wasn't anything to be concerned about really, but... 8 Q. Did anybody voice objection to the railroad 9 closing the crossing and taking it out? 10 A. No. Somebody said, Well, we don't need it. 11 The kids don't need to be down there, or something to 12 that effect, but, no, there was no formal objection 13 or comment on it. 14 Q. I take it y'all didn't take a formal vote on it 15 either? 16 A. No. I don't -- the best of my knowledge, we 17 did not take a vote on it. We just -- he just told 18 us what he was doing, you know. 19 If anybody had any questions or anything, I 20 guess we probably might have -- of course if the 21 meeting had been adjourned, it wouldn't have been 22 legal. 23 But, anyway, no there was -- it's just 24 something that he had done, and everybody thought it 25 was all right, I guess.	Page 83 1 he was, but he was... 2 BY MR. TUCKER: 3 Q. What does Mr. Helmert have to do with the 4 crossing, if anything? 5 A. He worked for 27 years. He is a couple of 6 years younger than I am. He retired a few years ago, 7 and he worked for Union Pacific Railroad. And he 8 worked this area, you know, up and down here for 9 Mulberry, Clarksville, Alex, all up and down through 10 here. 11 Q. In, in looking at the last part of your 12 statement on page 17, it says, And about the time we 13 requested it be a quiet zone, and they took the 14 crossarms out. When you say "crossarms," what are 15 you referring to there? 16 A. Those signs, you know, cross, crossbuck, I 17 think is what they call them -- 18 Q. Yes, sir. 19 A. -- on the railroad. 20 Q. I wanted to make sure that I understand -- 21 A. Yeah. 22 Q. -- what you were referencing there. So it 23 appears from, from this entry that the City of Ozark 24 asked Union Pacific to remove the crossing -- 25 A. Yes.
Page 82 1 Q. Okay. And then I take it sometime shortly 2 after that the railroad actually took the crossing 3 out? 4 A. Yes. I remember seeing them down there working 5 on it, but it might have been a month, or two weeks, 6 or -- but I, I do remember seeing them down there. 7 Q. Taking it out? 8 A. Taking it out, because I kind of hate to see 9 it -- you know, I had been over it so many times as a 10 kid, you know, that -- in fact, I have hunted down 11 there on that side of the track when it was trees, 12 before the water came up. 13 Q. And that was before the flood, back when the -- 14 A. Before the flood, okay, yeah. 15 Q. And did you recognize any of the people down 16 there from the railroad who were taking the crossing 17 out? 18 A. Not that I remember I didn't. 19 Q. You mentioned a name that I hadn't heard before 20 a moment ago. Is it Mr. Helmert? 21 A. Maxie Helmert. 22 THE WITNESS: He's going to be 23 deposed; isn't he? 24 MR. BROCKETT: I believe so. 25 THE WITNESS: Yeah. Well, he told me	Page 84 1 Q. -- and make that area a quiet zone? 2 A. Yes, that's, that's... 3 Q. Is that correct? 4 A. Yes. 5 Q. The council was informed that that was going to 6 happen? 7 A. Yes. 8 Q. But you said no formal vote was taken on it? 9 A. Not that I remember. No, I know there wasn't a 10 vote taken on it. 11 Q. Okay. 12 A. Because we were leaving at the time. 13 Q. As far as you were concerned, did the mayor 14 have the authority to go to the railroad and say, 15 Remove the crossing, without a formal vote being 16 taken? 17 A. Well, I don't think any of us questioned it. 18 We thought, well, it's just something -- you know, 19 it's no use to anybody, just might as well take it 20 out -- 21 Q. Get it done? 22 A. We really didn't even consider it being that -- 23 if we only knew what we know now. 24 Q. And do you understand that Mr. Timmerman did 25 ask the railroad to take the crossing out?

21 (Pages 81 to 84)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 85 1 A. Yes. Well, he asked -- let me see. Let me 2 think on that a minute. Did he ask the -- yes, as 3 far as I -- the best of my knowledge that he asked. 4 Q. Was -- as part of taking the crossing out, was 5 there any discussion about the railroad either 6 donating the depot to the city or, or selling it for 7 a small amount of consideration? Was that part of 8 the deal that happened? 9 A. At the time, the meeting you're talking about, 10 no, that was not discussed. It just, it was just 11 taking it out, you know, go for it, is what we've -- 12 my attitude toward it was. 13 Q. Were you part of the city council when the 14 discussions were had about the railroad depot and 15 turning it into a museum? 16 A. I'm sure I probably was. 17 Q. Do you remember -- first of all, does the, does 18 the city lease or own the old depot? 19 A. We own -- the city owns it now. 20 Q. And the land that goes with -- 21 A. Yes. 22 Q. -- the depot? So you -- the city bought it 23 from the railroad? 24 A. I think ten dollars or something like that. 25 They gave it, more or less donated it to the city.	Page 87 1 A. Oh, best I can remember, I mean, it's bigger 2 than this table here, you know, four or five feet 3 tall. Pretty good size, you know, where nobody could 4 get down in there. 5 Q. And then -- 6 A. And the water was up there close to it, the 7 best I remember. 8 Q. In other words, that pile was high enough that 9 if you were in a car, you could see -- 10 A. Yes. 11 Q. -- I can't go across there? 12 A. Right. 13 Q. Okay. Do you know who put the pile of ties 14 there, whether it was the railroad, or the city, or 15 who did it? 16 A. No, the railroad did that. 17 Q. And do you remember about when they did that? 18 A. No. I said that. 19 Q. Was it many years before the crossing actually 20 was taken out in 2001? 21 A. That I don't know. I don't think it was too 22 long before the crossing was -- 23 Q. Okay. 24 A. I guess when this water came up they might 25 have, for a safety thing.
Page 86 1 Q. Do you remember when that happened? 2 A. No, I remember it happening, but I couldn't put 3 a date to it. It was somewhere in that time. 4 Q. And that's what I was going to ask. Do you 5 remember if it was before the crossing came out, 6 about the same time, or later? 7 A. I think it was pretty close same time, right in 8 there. If there's any negotiations going on, 9 probably the council wouldn't have known about it. 10 Todd was talking to them. I don't know. That's 11 something I don't know. 12 Q. At the time the crossing was taken out you said 13 nobody used it. Would it be, have been possible, 14 though, for a car to have gone over the crossing and 15 gone down that road, or did the road not lead 16 anywhere? 17 A. No, it ended there, and there was a bunch of 18 old railroad ties and stuff just piled up right on 19 the other side of it to make sure that nobody 20 couldn't get over the crossing. 21 Q. When you say "the other side," do you mean the 22 south side? 23 A. The south side of the track, yes. 24 Q. About how big was that pile of crossties and 25 stuff?	Page 88 1 Q. The water came up in the 1970's; right? 2 A. Yes. Well, no, it would have been after that. 3 It would have been way after that. 4 Q. Okay. When Mayor Timmerman talked in the 5 meeting about the letter, the courtesy letter from 6 the railroad, and he said that the railroad was going 7 to take the crossing out, did, did -- you heard him 8 say that, and to the best of your knowledge, did the 9 other council members hear that as well? 10 A. Yes, because we were, the best I remember, 11 leaving, and he said, Hang on just a minute here. 12 You know, got everybody's attention. The best I 13 remember, that's the way it was. 14 Q. And if y'all were already in the process of 15 adjourning, would that necessary have made it into 16 the minutes of the city council meeting? 17 A. Not if it was after the adjournment it wouldn't 18 have made it in the meeting. 19 Q. We have been going for about another hour. 20 Let's take five minutes, if that's all right with 21 you, Mr. Mayor. 22 A. That's fine. 23 THE VIDEOGRAPHER: We're going off the 24 record. It's 10:57 a.m. 25 (Short break)

22 (Pages 85 to 88)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 89 1 THE VIDEOGRAPHER: We are back on the 2 record. It is 11:16 a.m. 3 BY MR. TUCKER: 4 Q. Mr. Mayor, we just took a short break. Can you 5 tell me in a nutshell what is Main Street Ozark? 6 A. It's a, it's a national organization. Of 7 course they have Arkansas Main Street, and they, what 8 they are -- their goal is to -- you know, like when 9 all of these little towns were drying up because of 10 Walmart and what have you, they wanted to recreate 11 the downtowns to be a vibrant business, and that's 12 their main goal. 13 Q. And was there a resolution passed by the city 14 council that started Main Street Ozark? 15 A. Yes. 16 Q. Does the city provide any kind of financial 17 support or other type of support for Main Street 18 projects, things of that nature? 19 A. We give the city 30,000 a year for the, for 20 them to operate and a salary for the Main Street 21 director. 22 Q. You said, "We give the city." I think you 23 meant to say -- 24 A. I mean, I'm sorry, we give -- the city gives 25 Main Street 30,000 a year. It was 25. We just	Page 91 1 was familiar with. 2 Q. Is -- and I don't quite understand all of this. 3 Is the -- who's the application made to to get a 4 grant? 5 A. Well, I haven't really been involved that 6 closely with it, but this grant -- I would have -- 7 they're in Little Rock, the grant, the grant 8 people -- 9 Q. Who does it come from, may be a better way for 10 me to say it. Where does the money come from, if you 11 get approved for the grant? 12 A. Well, these are grants from the State of 13 Arkansas, I guess is what they... 14 Q. And it looks like, if you'll look about midway 15 down the page, it says, Box Number 7. Total Project 16 Budget, it says GIF \$200,000? 17 A. Yes. 18 Q. That would be the grant that y'all were 19 applying for, the city was applying for? 20 A. Yes. The Main Street applied for that through 21 the city, I think is the way it was. 22 Q. Then it says city \$319,000, so that's the 23 amount of money toward the project that the city was 24 going to contribute? 25 A. That's the 319,000 that I mentioned that was
Page 90 1 recently bumped it up to 30,000. 2 Q. And out of that 30,000, that includes the 3 salary for the executive director? 4 A. Yes. 5 Q. And is that done by resolution every year, or 6 is it for a period of years? 7 A. We just put it in our budget every year. 8 Q. Does the city have an official representative 9 from the city sit on the Main Street Ozark board or 10 participate in Main Street Ozark? 11 A. I don't -- do we? Who -- yeah, since I'm mayor 12 I'm the ex-officio, but I haven't made a meeting yet. 13 Q. Okay. I'm going to pass to you, Mr. Mayor, 14 what I am going to mark as Exhibit Number 21 to your 15 deposition. 16 (Exhibit No. 21 was marked.) 17 BY MR. TUCKER: 18 Q. At the top it says GIF Infrastructure, Grant 19 Application Cover Page. Do you see that? 20 A. Yes. 21 Q. What does "GIF" stand for, do you know? 22 A. Oh, it's a grant that -- from what I 23 understand, it's an economic development, and they 24 can use it for anything that's, as far as the 25 economic development. This is one grant that I had,	Page 92 1 earmarked for the Riverfront, and it's still, you 2 know, in the -- none of it has been spent, but it's 3 been approved several years. But they can't spend 4 that money until they get the permits from the 5 railroad and the Corps. 6 Q. Both from the railroad to go across the tracks, 7 and then from the Corps of Engineers to build 8 something in the river? 9 A. In the water, yes. 10 Q. And at the bottom of the first page, it looks 11 like it was signed by then Mayor of Ozark Vernon 12 McDaniel -- 13 A. Yes. 14 Q. -- February 22, 2008? 15 A. Uh-huh. 16 Q. And then on page two it gives a project 17 description; is that right? 18 A. Yes, uh-huh. 19 Q. And it talks here about a -- in the first 20 paragraph it says, The phase consists of two 21 components, construction of a 7,200 square foot 22 floating boardwalk located on the Arkansas River. Do 23 you see that? 24 A. Yes. 25 Q. If my understanding is right, Mr. Mayor, that

23 (Pages 89 to 92)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 93

1 was the initial proposal?

2 **A. Yes, I think so.**

3 Q. And then, I think, the Corps of Engineers said,

4 We don't want that in the Arkansas River?

5 **A. Uh-huh.**

6 Q. Is that right?

7 **A. As far as I know, to the best of my knowledge.**

8 Q. And then the proposal was scaled down, and

9 we'll go over this in a minute, I think to a floating

10 boat dock?

11 **A. Uh-huh.**

12 Q. I'm sorry. Was that a "yes"?

13 **A. Yes, yes. Sorry. Sorry.**

14 Q. That's okay. Did -- has there been -- let me

15 back up. This was an application for a grant. Was

16 the grant by GLF approved in the amount of \$200,000?

17 **A. Yes.**

18 Q. Okay. Was there ever a resubmission for a

19 grant for the scaled down project, not this 7,200

20 square foot floating marina, but, but was there

21 any --

22 **A. Not that I know of. Not that I'm aware of.**

23 Q. Okay. And that's what I, where I was going

24 with that. Turn with me to the last page in that

25 exhibit, if you would, please, or, I'm sorry, the

Page 94

1 next to last. Does it -- are you looking at a letter

2 from someone named Steve Outlaw?

3 **A. Yes.**

4 Q. And it's dated January 23, 2008 at the top of

5 the page?

6 **A. Yes.**

7 Q. Who is Mr. Outlaw?

8 **A. Oh, he's around -- he's a businessman that, and**

9 **he owns rental property and he also owns the river,**

10 **the property there on the Riverfront that's -- what's**

11 **the name of that?**

12 **The Riverview Plaza thing there that has**

13 **the antique shops in there. It's the old feed mill**

14 **is what it is.**

15 Q. Is Mr. Outlaw an Ozark resident?

16 **A. Yes.**

17 Q. Okay. And in the letter it says, This letter

18 is to confirm that Outlaw Enterprises is committed to

19 making a considerable investment in the construction

20 of the marina on the Arkansas River at Ozark. Is he

21 talking about a marina on the south side of the

22 river, over there by the R.V. park?

23 **A. Let's see. Well, at the time it would have**

24 **been on the north side.**

25 Q. Okay. But -- I see what you're saying, and he

Page 95

1 says, When completed, a 110 boat slip marina, and

2 convenience store with gasoline?

3 **A. Yes.**

4 Q. Do you see that?

5 **A. Yes.**

6 Q. And that's back when --

7 **A. Early on.**

8 Q. And before the Corps said, We're not going to

9 have that type of structure in the river?

10 **A. Uh-huh.**

11 Q. Is that correct?

12 **A. Yes.**

13 Q. Okay.

14 **A. To the best of my knowledge.**

15 Q. Is Mr. Outlaw a member of Main Street Ozark?

16 **A. Yes, he's on the board.**

17 Q. Do you know why Mr. Outlaw was willing to

18 invest, as he says, approximately \$500,000 to

19 construct this big marina on the north side?

20 **A. Do I know why he did?**

21 Q. Yes.

22 **A. I guess investment. I don't -- that -- I**

23 **wouldn't know about that.**

24 Q. You didn't have any personal dealings with him

25 about this, did you, or --

Page 96

1 **A. No, sir.**

2 Q. Okay. Tell me, is Main Street Ozark, is it a

3 separate body from the Ozark City Council?

4 **A. Yes. It's a separate entity.**

5 Q. Is it like a 5-0 -- what is it, 5-0

6 something -- what is the number?

7 **A. 5-0-1 --**

8 MS. JONES: 501(C)(3).

9 MR. TUCKER: Thank you.

10 BY MR. TUCKER:

11 Q. Is it a nonprofit corporation, to your

12 knowledge?

13 **A. Yes, I guess it would be.**

14 Q. Can Main Street Ozark speak for the city

15 council?

16 **A. No.**

17 Q. Or can it speak for the City of Ozark?

18 **A. No.**

19 Q. Its purpose is to generate economic activity

20 for Ozark?

21 **A. For downtown Ozark, yes.**

22 Q. You said you had served on Main Street Ozark

23 before?

24 **A. Yes.**

25 Q. When did you serve on Main Street Ozark?

24 (Pages 93 to 96)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 97	Page 99
1 A. Well, it's been -- let's see, it was probably 2 in the nineties, late nineties. I was on it five 3 years, I think. 4 Q. Were you on the board of directors; is that 5 correct? 6 A. Yes. 7 Q. And who was the executive director when you 8 served? 9 A. James Hugh Gilmer. 10 Q. Is Sandy Key the current executive director? 11 A. Yes. 12 Q. When did she become executive director? 13 A. When James Hugh retired, whenever that was, and 14 I was on the board at the time. And -- well, there 15 were three of us. Actually, we hired Sandy. 16 Q. I was going to ask you that. How many board of 17 directors are there? 18 A. What, do you know, seven, ten. There's 19 several. 20 MR. BROCKETT: I believe that's right. 21 A. Something in there. I'm not sure. 22 Q. We went on to the website of Main Street Ozark. 23 I think the last time it was updated was 2012. 24 A. Yeah. 25 Q. It looks like there may be at least pictures of	1 Q. Okay. He doesn't look very old. I was going 2 to say brothers. 3 A. Okay. 4 MR. BROCKETT: He would appreciate 5 that. 6 Q. Do you know if this is still the make-up of the 7 board of directors of Main Street Ozark, or has that 8 changed? 9 A. I think basically it's probably the same. 10 There could be some changes on there. I don't know. 11 I don't make the meetings or... 12 Q. I take it since Ms. Key is the executive 13 director, maybe that is a question better left to 14 her. Would that be right? 15 A. Yes, she would know. 16 Q. Do you know if all of these people who are 17 pictured in Exhibit Number 22 are Ozark residents? 18 A. Dariell Mathis, he lives in Greenwood, I think. 19 He's, he's the architect, and -- they all live in 20 Ozark or close. 21 Josh Freeman, I don't, I don't know if he 22 lives -- well, he's still got a business here, but he 23 did work in Oklahoma. But, anyway, as far as I know, 24 they're probably all -- 25 Q. Okay.
Page 98	Page 100
1 12 people that were on the board of directors. Let 2 me mark that as an exhibit. We are going to talk 3 about it. We will make that Exhibit Number 22. 4 (Exhibit No. 22 was marked.) 5 BY MR. TUCKER: 6 Q. Do you see that Mr. Mayor? 7 A. Yes. 8 Q. It looks like at least in 2012 it says Steve 9 Outlaw is the president. 10 A. Yes. 11 Q. Do you know if he is still president? 12 A. No, sir. I -- 2012? 13 THE WITNESS: Are you president now? 14 MR. BROCKETT: Uh-huh. 15 THE WITNESS: Yeah. 16 BY MR. TUCKER: 17 Q. Oh, Mr. Brockett is president of Main Street 18 Ozark? 19 A. Yes. 20 Q. And then I see there's a second row of 21 pictures, a Bill Brockett. Do you see that? 22 A. Yeah, I see Bill. 23 Q. I'm guessing that Bill Brockett and Christopher 24 Brockett are -- 25 A. Father/son.	1 A. -- except Dariell. 2 Q. Do you know the name Tommy Adams? 3 A. Yes. 4 Q. Who is he? 5 A. He used to have a business here, the catfish 6 house, and he was on the board, actually, at the 7 time -- I know we were on the A & P together, but, 8 yes -- yeah, I know Tommy Adams. 9 Q. Does he have any connection with city 10 government or Main Street Ozark, that you know of? 11 A. Not that I know of. 12 Q. What about Royce Watkins, do you recognize that 13 name? 14 A. I don't recognize that name. 15 MS. JONES: Royce Gattis. I may have 16 put that wrong. 17 Q. Okay. Sorry. Royce Gattis, tell me who he is? 18 A. He lives out west of town here. He's, I guess, 19 a retired realtor, businessman. 20 Q. Does he have a connection with Main Street 21 Ozark? Is he on the board? 22 A. He's -- I don't think he's on the board. I 23 don't know that, but he... 24 Q. I think we looked at an exhibit earlier. It 25 possibly was that newspaper article about the YouTube

25 (Pages 97 to 100)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 101	Page 103
1 documentary being made it. 2 A. Okay, yeah, he was in charge of that. 3 Q. Did -- Mr. Brockett is correct. It's Exhibit 4 Number 9. 5 A. Yes. 6 Q. Did you have any involvement in the making of 7 that documentary? 8 A. Not at all, no, sir. 9 Q. Have you seen it before? 10 A. Yes. 11 MR. TUCKER: Okay. Let's go off the 12 record for a moment. 13 THE VIDEOGRAPHER: We are going off 14 the record. It's 11:32 a.m. 15 (Witness reviews YouTube documentary.) 16 THE VIDEOGRAPHER: We are back on the 17 record. It's 11:41 a.m. 18 BY MR. TUCKER: 19 Q. Mr. Mayor, you just watched the YouTube Ozark 20 documentary; is that correct? 21 A. Yes. 22 (Exhibit No. 23 was marked.) 23 BY MR. TUCKER: 24 Q. I will hand you what I have marked as Exhibit 25 Number 23 to your deposition. That's a transcript of	1 A. Yes. 2 Q. And it says, We have a railroad bridge which is 3 a risk factor, a spur, which is a risk factor, and we 4 have a curve. So trains moving fast around curves is 5 a huge risk factor. And we have three risk factors 6 in a row, so we're concerned about derailment. 7 And you told me earlier that you had strong 8 concerns about derailments if the proposed crossing 9 goes back in; is that correct? 10 A. Yes. 11 Q. And then after she says she thinks trains are 12 going too fast, the next sentence says, Being in a 13 valley, it would take forever for any type of 14 chemical spill in the air to dissipate. 15 Do you see that? 16 A. That's on the next page? 17 Q. Yes, sir. 18 A. Yes. 19 Q. And as you told me, that was a safety concern 20 of yours, that if there was a chemical spill, being 21 in the valley, it could take a very long time to 22 dissipate. 23 A. Well, that I don't know about, but -- 24 Q. But you -- 25 A. But, yes, it would -- I guess it would be a, be
Page 102	Page 104
1 the documentary. 2 If you'll turn to page two with me, and 3 I've drawn in blue pen under narrator. Do you see 4 where it says, Union Pacific carries extremely 5 dangerous chemicals, including sulfuric acid, 6 liquefied petroleum gases -- I'll mispronounce 7 this -- d-a-l-u-i-n-e, and then the second word, 8 d-e-l-y-a-l-y -- strike that -- the second word, 9 d-e-l-y-a-l-c-y-a-n-a-d-e, sodium hydroxide, 10 paraformaldehyde, and chlorine, it says, which are 11 toxic and even deadly if a spill were to occur due to 12 a derailment. 13 When you and I were talking earlier about 14 your safety concerns at the crossing, were those some 15 of your concerns, that those type of chemicals were 16 being transported through Ozark, and if a train 17 derailed, and there were a leak of any of those 18 chemicals, is that part of the safety concerns that 19 you had? 20 A. Yes, sir. The chemicals, I didn't know the 21 technical name of them, but chemicals basically, yes. 22 Q. Hazardous materials? 23 A. Yes. 24 Q. And then the next entry, where it says, Female, 25 I believe that's Ms. Sandy Key speaking?	1 a concern. 2 Q. Okay. Do you have -- oh, do you know if anyone 3 received permission to use Union Pacific's logo in 4 the video? 5 A. I don't know. I didn't have anything to do 6 with this. 7 Q. Who sponsored the YouTube video? Would that be 8 Main Street Ozark? 9 A. Main Street and Royce Gattis was the -- the two 10 people that was in it there was -- as far as I know, 11 I mean. 12 Q. Okay. You can set that in our exhibit pile 13 now. Do you have -- strike that. Do you have an 14 understanding of what the current plan is for the 15 marina on the south side of the river? 16 A. Pretty much, I think so. 17 Q. Okay. Tell me what that's supposed to look 18 like, if, in fact, it goes through. 19 A. Well, it's -- like I say, it's on the south 20 side, and I think they plan on 200 slips there, and a 21 little store, bait shop and thing on the bank there, 22 and a parking lot, and a septic system. And I think 23 they've got ten large slips for large boats, yachts, 24 or whatever they, big boats. 25 Q. Have you seen actual plans for the marina on

26 (Pages 101 to 104)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 105

1 the south side that are current?

2 **A. I probably have. I think so.**

3 Q. And the person in charge of that, would that be

4 Mr. Outlaw?

5 **A. No. On the south side?**

6 Q. Yes, sir.

7 **A. No, the Olsons is the ones that's putting**

8 **the -- that's changed. You know, Steve is not**

9 **involved in the -- to my knowledge it's the Olsons**

10 **from Clarksville is the one that's putting the marina**

11 **in now.**

12 **They got a grant through the Game and Fish**

13 **and the state for 1.2 million, I think, to put the**

14 **marina in over there.**

15 Q. On the south side?

16 **A. On the south side, yes, sir.**

17 Q. And are they going forward with that right now?

18 **A. Well, it's kind of run into some obstacles, you**

19 **know, with the Corps and different things. Yeah, I**

20 **mean, it's still in the -- I think they are going to**

21 **meet with me Friday. They want to meet with me**

22 **Friday, which I haven't talked to them since I've**

23 **been elected mayor.**

24 Q. Is it your understanding that the marina on the

25 south side of the river is -- they're going to try to

Page 106

1 put that in regardless of whether there's the boat

2 dock on the north side of the river?

3 **A. Well, the way I understand it, that's all**

4 **they -- about everything down there hinges on the**

5 **lawsuit.**

6 Q. It's all tied into one?

7 **A. Not exactly tied in, but they are kind of a**

8 **wait-and-see, is my understanding. I may be -- I'm**

9 **not sure.**

10 Q. If Ozark does not get approval or permission to

11 cross Union Pacific's tracks, and a boat dock on the

12 north side doesn't go in, is it your understanding

13 that's going to kill the marina on the south side of

14 the river?

15 **A. Well, they have a plan, an option, you know, to**

16 **bus around, but now I couldn't say for sure what, you**

17 **know, if that's, if they're going to go through with**

18 **it or not, but.**

19 Q. To your knowledge if Ozark is not allowed to

20 cross Union Pacific's tracks to get to the, the

21 river, we don't know that that would kill the marina

22 on the south side of the river?

23 **A. Yeah, I wouldn't -- I don't know for sure about**

24 **that.**

25 Q. With respect to the, the north side of the

Page 107

1 river, do you know what the current plan is now if

2 Ozark did get access to go across Union Pacific's

3 tracks, as far as a boat dock?

4 **A. Well, I think they've got some transit docks**

5 **planned to go in there.**

6 Q. They'd be floating in the river?

7 **A. Yes, I -- yeah, I guess they'd be floating in**

8 **the river.**

9 Q. And when you say "transient," it wouldn't be a

10 permanent structure where they, they actually attach

11 something to the river bottom; is that right?

12 **A. Well, I don't know about that. It was -- my**

13 **understanding transit boats that just come in a short**

14 **time and go on up the river, or down the river --**

15 Q. Okay.

16 **A. -- is what -- I'm not sure about that, now.**

17 Q. Have you seen any plans for the boat dock on

18 the north side?

19 **A. No, sir. I don't think I have.**

20 Q. Do you know approximately how many boats the

21 transient boat dock on the north side would be

22 expected to accommodate?

23 **A. No, I don't -- I don't remember.**

24 Q. I'm just wondering in my mind if we're talking

25 about, like, four or five, or are we talking about

Page 108

1 six or eight?

2 **A. Small numbers like that, it's just a -- the way**

3 **I understood, it's like a transient, you know, boats**

4 **for a quick stop, you know, for whatever they --**

5 Q. On the north side would there be any gas pumps

6 there? Is that part of the concept?

7 **A. Well, they talked about an apparatus that would**

8 **be used as a fire truck there on the -- and I'm**

9 **pretty sure it was on the north side, so I...**

10 Q. Tell me about that, an apparatus to be used as

11 a fire truck. I'm not quite sure I understand.

12 **A. It was some kind of a mobile thing, you know,**

13 **that they have to have fire protection, you know,**

14 **when they refuel and things.**

15 **So that part I'm not really up on. I just**

16 **remember them talking about the --**

17 Q. I just want to --

18 **A. -- fire protection.**

19 Q. I just wonder if, if the transient boat dock

20 goes in, could people pull up to that boat dock and

21 get gas for their boats there; do you know?

22 **A. I assume that's what they were talking about.**

23 Q. And I take it to refill the gas container there

24 that either a gas truck would have to come across the

25 railroad tracks, or gas would have to be brought up

27 (Pages 105 to 108)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 109 1 on the water side; is that right? 2 A. Probably. This is things that I don't, really 3 haven't been advised of, I don't know much about. 4 Q. Do you know what the current plan is if, if 5 access across the tracks is granted for a walking and 6 hiking trail, what it would look like, and where it 7 would go? 8 A. Yeah, they've got plans for walking trails to 9 go, I think, in both east and west on the sides of 10 the, of the track, south side. 11 Q. Do you know how close to the rails those trails 12 are, would be? 13 A. Well, they'd have to be pretty close because 14 they, you know, it's... 15 Q. Those trails -- if Union Pacific owns, say, 16 50 feet on the south side of the tracks, those trails 17 would be on Union Pacific's property? 18 A. Yes. 19 Q. Okay. Do you know if anybody has any, like, 20 drawings of where the trails would be? I haven't 21 seen them. I didn't know if Main Street Ozark would 22 have them, or if you did? 23 A. No, I don't remember seeing any, other than 24 just, they said they have the plans and all of that. 25 I haven't seen them.	Page 111 1 A. P-a-u-l, yes. 2 Q. Is that a male or female? 3 A. Male. 4 Q. You said, He told us we weren't putting 5 anything in the water? 6 A. Told me that, or that they wasn't putting 7 anything in the water. Because of the channel and 8 the currents on that north side, he said, just, you 9 know, we couldn't do it. 10 Q. So that would mean no transient boat dock? 11 A. Evidently it would, yeah. 12 Q. And if you don't have the boat dock, there is 13 really no need to cross the railroad tracks; is 14 there? 15 A. Well, if that's the case, I mean, it's -- of 16 course -- well, that's true, yes. 17 Q. Okay. Has any consideration been given to 18 maybe having a boat dock in Gar Creek, which is off 19 the main channel? 20 A. Not any serious thing. Early on, you know, 21 there was mention, but there's a trestle down there 22 that's, the height of it, you couldn't get a big boat 23 under it. 24 Q. Could you get, like, ski boats and bass boats 25 under it?
Page 110 1 Q. Maybe we ask Main Street Ozark that? 2 A. Yes. That would be a good question. 3 Q. Do you know who is in charge of drawing out 4 where the trails would be and designing those? 5 A. It would be Main Street, Sandy Key. 6 Q. If, if the City of Ozark gets permission to 7 cross the railroad tracks there to the east of the 8 depot before a transient boat dock could go in, I 9 think it would still require the Corps of Engineers' 10 approval; is that right? 11 A. Yes. 12 Q. Do you know what the current word is from the 13 Corps on the plan for the boat dock and the hiking 14 trails? 15 A. Yes. They told me that they wasn't putting 16 anything in the water down there. You know, that was 17 last Wednesday with Colonel Paul. 18 Q. Was that verbally, or did we have, see 19 something in one of the exhibits? 20 A. That was verbally. 21 Q. Okay. And Colonel, who is that again? 22 A. Paul. He's Colonel Paul of the -- 23 Q. P-a-u -- 24 A. Courtney, Courtney Paul, yes. 25 Q. P-a-u-l?	Page 112 1 A. Yeah, they go under it all of the time. If it 2 wasn't for that trestle, that would be the perfect 3 scenario down there, but that's not the way it is. 4 Q. Because if there was a dock there in Gar Creek, 5 people could get out of their boats and never have to 6 cross the railroad tracks to get into town? 7 A. Yes. 8 Q. Okay. Would -- you know what a party barge is? 9 A. Yes. 10 Q. Could party barges go under the trestle there 11 and go up to Gar Creek? 12 A. Some of them, not a big one. 13 Q. I have seen it, and I know a big house boat 14 couldn't get under it. 15 A. Right. 16 Q. Okay. I saw a mention about, early on, a 17 University of Arkansas study to the effect that 187 18 jobs would be created, but I think that was in 19 connection with the 7,200 square foot marina and 20 restaurant and everything else. Is that right? 21 A. That was done when it was all going to be on 22 the north side of the river, is what I understood. 23 Q. Okay. That, that job estimate, that doesn't 24 pertain to the, the current plan of the transient 25 dock; does it?

28 (Pages 109 to 112)

Page 113 1 A. Well, I don't know about that, if they still 2 want to use that plan, but... 3 Q. Have you communicated Colonel Paul's statement 4 to you that nothing was going to go in on the north 5 side of the river to either Main Street Ozark or 6 other members of the city council? 7 A. No. Well, maybe one or two of the council. I 8 haven't brought it up in a public meeting. 9 Q. You said y'all just had that conversation, 10 what, last week? 11 A. Last Wednesday, yes. 12 Q. And if today is February the 11th, last 13 Wednesday would have been -- I don't know. 14 A. The 11th -- 15 Q. I can't count backwards very well. The 5th? 16 A. Something, yeah. 17 Q. Okay. I take it or -- well, just last week. 18 We know we are at February 11th today. 19 A. Yes. 20 Q. Are you going to need to communicate Colonel 21 Paul's statement to people at Main Street Ozark and 22 the Ozark City Council? 23 A. Well, I don't know what I am going to do with 24 that. Of course, you know, there's nothing in formal 25 writing or anything, so that's something I don't want	Page 115 1 right-of-way there at the crossing that you're aware 2 of? 3 A. Repeat that again. 4 Q. Yes, sir. You're not aware that the city has 5 ever initiated any condemnation proceedings to 6 establish a right-of-way to go over the tracks there? 7 A. No. 8 Q. To your knowledge there's no recorded easement 9 or other instrument granting the city the right to 10 cross Union Pacific's right-of-way and tracks at that 11 location; is there? 12 A. No. 13 Q. Mr. Mayor, were you involved in the preparation 14 of the Complaint in this lawsuit or the Amended 15 Complaint, the legal document that starts the 16 lawsuit? 17 A. No. 18 Q. Have you read the Complaint or the Amended 19 Complaint? 20 A. Of the, the city's Complaint? 21 Q. Yes, sir. 22 A. I'm sure I probably have, yes. 23 Q. Okay. Is it up to the city council to decide 24 when and how much to pay its attorney, Mr. Brockett? 25 Is that something that's voted on and approved?
Page 114 1 to get in -- you know, if they did change their mind 2 or something, I mean, that's just what the, in a 3 general conversation. 4 Q. Okay. The street that you told me about that 5 did cross the tracks that was to the east of the 6 depot that was dirt that went down to the dump -- 7 A. Uh-huh. 8 Q. -- are you aware of any written documentation 9 that shows that street was ever dedicated as a city 10 street? 11 A. There's no documentation of that. It's never 12 been dedicated, that we know of, to the city. 13 Q. Are you aware of any recorded plat purporting 14 to dedicate that street for public use? 15 A. I'm not aware of it, no. 16 Q. Do you know of any ordinance accepting a 17 recorded plat to dedicate that street to a public 18 use? 19 A. No. 20 Q. And there's no record of which you are aware of 21 the city condemning that street for a public use; is 22 there? 23 A. No. 24 Q. The city has never initiated condemnation 25 proceedings for the purpose of establishing a	Page 116 1 A. Yes. We, we voted on that, to pay him out of 2 the grant money. 3 Q. Do you know how much money Mr. Brockett has 4 been paid to date? 5 A. Twenty thousand. I think that's right. 6 That's... 7 Q. Is there anything else owed, or is that the 8 extent that Mr. Brockett will be paid? 9 A. The way I understood it, that's the extent of 10 what we would pay him. 11 Q. Originally was approximately 50 to 60 thousand 12 dollars set aside to pay the city's attorney? 13 A. Not that I know of. There was people 14 questioning, you know, was it going to cost us 15 50,000, or, I think they said 200,000, or something, 16 but that was just -- you know, we knew nothing of 17 what was going to happen. We just threw some figures 18 out there. 19 Q. You said the money that's been paid to 20 Mr. Brockett, the \$20,000, came from the grant money 21 that the city has been given? 22 A. Yes. 23 Q. And that's the GIF -- 24 A. Yes. 25 Q. -- grant of \$200,000?

29 (Pages 113 to 116)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 117 1 A. Yes. 2 Q. Is it permissible to pay the city's attorney 3 for this lawsuit out of the grant money? 4 A. Well, that's a question that I pursued, and I 5 called Mr., the chief legislative person over the 6 grants, and he said, he said no. 7 Q. That was not a permissible use of the grant 8 money? 9 A. He said it's not legal, but I didn't pursue it 10 because if we didn't pay it out of the grant, we've 11 got to turn around and pay it out of the general. 12 Q. General fund? 13 A. Yes. I don't know if that's what I should have 14 done or not. 15 Q. Who is the person that you spoke with? 16 A. Morris Jenkins. 17 Q. Morris Jenkins? 18 A. Morris Jenkins, yes. He's the chief 19 legislative officer over the grants, in Little Rock. 20 Q. I take it you didn't tell Mr. Jenkins that the 21 City of Ozark had paid Mr. Brockett \$20,000 out of 22 the grant that you all received? 23 A. I don't think so, no. 24 Q. Okay. You just wanted to know if it was 25 legal --	Page 119 1 Q. What was the sentiment among the voters you 2 spoke with about whether or not they wanted to pursue 3 the lawsuit and try to getting the crossing 4 re-installed? 5 A. Most everybody I talked to was not for it and 6 was sick and tired of the, this being, hanging out 7 there over our heads, the lawsuit. 8 And that's, that's what I gathered from 9 the -- and we made a house-to-house campaign. My 10 wife and I, we talked to a lot of people. 11 Q. Did a number of those people say they want to 12 just drop it and be done with it? 13 A. That's what most of them said. 14 Q. And do you feel like you canvassed most of the 15 residents of the City of Ozark during your campaign? 16 A. Yes. It was a three-way race, and I won 17 without a runoff, so. 18 Q. So you got more than 50 percent of the vote? 19 A. No. There is a law that if you get 20 percent 20 more than the second place then you're -- there's not 21 a runoff. 22 Q. You were in first place. Who came in second? 23 A. Lee Gardner. 24 Q. And then Ms. Sneath? 25 A. Ms. Sneath. She got a little over 20 percent,
Page 118 1 A. Yes. 2 Q. -- and he said it's not. 3 A. And I, more or less -- yeah, that's... 4 Q. Let me ask you about some of the witnesses that 5 have been identified in Ozark's discovery requests. 6 Just tell me if you know these people, Mr. Mayor. 7 and -- obviously, you know Sandy Key? 8 A. Yes. 9 Q. Executive director of Main Street Ozark, and 10 Carol Sneath was the former mayor before, immediately 11 preceding you? 12 A. Yes. 13 Q. And, matter of fact, she ran in the election in 14 which you ran; correct? 15 A. Yes. 16 Q. And you were voted in as mayor? 17 A. Yes. 18 Q. I'm sure you ran on a number of issues, was one 19 of the issues that you talked about with people 20 whether or not to go forward with this lawsuit 21 against Union Pacific, and the crossing, and the 22 marina, and things like that? 23 A. That was the main issue. 24 Q. It was your main issue? 25 A. One off the main issues, I'd say.	Page 120 1 so, of the vote. 2 Q. And during the time period of her being mayor, 3 she was very strongly in favor of going forward with 4 the lawsuit and getting the -- 5 A. Yeah, very much. 6 Q. Vernon McDaniel, is he former mayor? 7 A. Yes. 8 Q. Former city council member? 9 A. Yes. 10 Q. Does he still live in Ozark? 11 A. Yes. 12 Q. Does he work, or is he retired? 13 A. He's retired mostly, but he still covers a few 14 stories for The Spectator. He worked at The 15 Spectator. 16 Q. We mentioned Todd Timmerman; he was a former 17 mayor? 18 A. Yes. 19 Q. Rex Anderson? 20 A. He's on the council now. 21 Q. Does he work in insurance? 22 A. Yes. Down on the square there. 23 Q. Tom Edgin? 24 A. He's, he still lives here. He lives down, 25 well, just behind the Plaza down there, the new Plaza

30 (Pages 117 to 120)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 121	Page 123
1 across from the railroad tracks there. But he's 2 retired. 3 Q. Okay. 4 A. His health is not that good, but, yes, he's 5 still around. 6 Q. Former council member? 7 A. Yes. 8 Q. Jesse Fultz? 9 A. Yes. 10 Q. F-u-l-t-z? 11 A. Yes. 12 Q. Is that a man or a woman? 13 A. Man. 14 Q. And what does he do? 15 A. He's a carpenter, and he still works. I saw 16 him a couple of days ago. 17 Q. Okay. Former council member? 18 A. Yes. He was on one term, I think, back several 19 years ago. 20 Q. Roxie Hall, she's a current council member? 21 A. Yes. 22 Q. Can you tell me the, the current council 23 members? You just mentioned Ms. Hall, Rex Anderson. 24 Who are the others? 25 A. Okay. Harvey Waters, and Victoria Vicars, and	1 Rex, like I say, might have been on there. 2 Q. I think we were provided a list of people from 3 Mr. Brockett who, who were on the council in 2001, 4 and it looks like -- it says Todd Timmerman, he would 5 have been mayor? 6 A. Yes. 7 Q. And then Tom Edgin, Roxie Hall, W.D. House? 8 A. Okay. Mr. House, okay. That's it. 9 Q. I'm sorry. I'm reading from -- 10 A. Because he's deceased now. 11 Q. Okay. I'm reading from 2001 to 2002. Rick 12 McClellan? 13 A. Yes. 14 Q. T.R. McNutt, and John Milam? 15 A. Okay. John, okay, that sounds... 16 Q. And then the list we got from 1999 to 2000 says 17 Todd Timmerman, Rex Anderson, Nan Anderson, Jesse 18 Fultz, Roxie Hall, Jesse Mason, and Diana Wilson. 19 Does that -- 20 A. That sounds like the council that was there. 21 Q. Okay. Let me ask you a few more questions 22 about these folks who, who are on Plaintiff's witness 23 list. You already told me about Michael Helmert? 24 A. Well, Michael is on there too, but Maxie and 25 Michael are brothers.
Page 122	Page 124
1 Chris Warden, and, of course, Roxie, and -- let's 2 see, who am I forgetting here? 3 MR. BROCKETT: Susan Holman. 4 A. Susan Holman, yes. 5 Q. Okay. There are six council members? 6 A. Yes. 7 Q. When a vote is taken the council members vote. 8 Do you ever vote, or do you only serve to be a 9 tiebreaker? 10 A. I would vote only in a tiebreaker. 11 Q. Which would be a three-to-three vote? 12 A. A three-to-three tie, yes. 13 Q. Do you remember who the city council members 14 were at the time you told me Todd Timmerman read the 15 letter from the railroad and said they're going to 16 take the crossing out? We have you. 17 A. Okay. I was on there. Tom Edgin was on there. 18 Roxie Hall was on there. Rick McClellan was on 19 there, and, gosh, who was the other one? Rex 20 Anderson. 21 I think Rex was on there. No, Rex wouldn't 22 have been on there because he was off, then back on, 23 kind of the way I was over the years. I've been off 24 and on. I'm not sure. Gosh, that was a while back. 25 It could have been Rex. I'm not sure, but anyway.	1 Q. Okay. 2 A. And most of their family is railroad people. 3 Even his granddad, back in the years, was railroad. 4 Q. Wallace Alston, do you know him? 5 A. Yes. 6 Q. Who is that? 7 A. He owned the furniture store, and he recently 8 retired. 9 Q. Did he ever have a connection with the city 10 council or Main Street Ozark? 11 A. No. 12 Q. Phillip Smith? 13 A. He owns a hardware store over there on Third 14 Street, North Third, 219. 15 Q. Kenneth Smith? 16 A. Yes, he's -- oh, he's on the board at the Bank 17 of the Ozarks. He's been around years. 18 Q. Don Whitson? 19 A. Well, he's retired. It's Donnell Whitson. 20 He's, he's still around here. 21 Q. Robert Chrisman? 22 A. Yeah. He owned property down there by the 23 railroad yard. He used to have Chrisman's Ready Mix 24 down there. 25 Q. Was it on the north side of the tracks?

31 (Pages 121 to 124)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 125	Page 127
1 A. Yes, on this side. 2 Q. Okay. Is that ready mix still in business down 3 there? 4 A. No. They recently went out of business. I 5 think they filed bankruptcy. 6 Q. Lonnie Turner? 7 A. Yes, he's an attorney here. 8 Q. Marshall Chrisman, would that be related to 9 Robert Chrisman? 10 A. Brother. 11 Q. Virginia Brown? 12 A. She's still here, yes. She's retired from the 13 telephone company, I believe. She lives out west of 14 town. 15 Q. Evelyn Whitson? 16 A. Yes, that's Donnell's wife. 17 Q. Shirley Wilson? 18 A. She's still here. She's with Arvac. I think 19 she's... 20 Q. Arvac is -- 21 A. Oh, what they -- kind of a DHS office. 22 Q. Okay. 23 A. Something to do with that. 24 Q. Okay. H.E. Allred? 25 A. Yes, he's around here. In fact, I think he	1 A. He also worked for the gas company. He's 2 retired now. 3 Q. Truman Johnson? 4 A. Okay. He's retired. Let's see what did he 5 retire of? He lives up in Johnson -- he lives still 6 here, around here. 7 Q. Gelene or Gelene Johnson? 8 A. That'd be his wife. 9 Q. Robert Trotter? 10 A. He's a retired, for the postal service, and 11 also retired fire chief. 12 Q. You said Maxie Helmert, that's the one we've 13 talked about? 14 A. Yes. He's retired from Union Pacific Railroad. 15 Q. Mary Francis Gilmer, you told me about her 16 earlier? 17 A. Yes. She lives over on River Street too, 18 retired. 19 Q. Paul Reeves? 20 A. Paul Reeves, there's two of them. Paul Reeves, 21 I, I don't know which one. 22 Q. Okay. Harold Pickhartz? 23 A. He's -- he lives -- he's still here. He lives 24 out on Second Street. He's 99 years old, I think. 25 Q. Congratulations to him.
Page 126	Page 128
1 used to own the -- I don't know if he owned those 2 tanks down there or not. 3 Q. When you say "the tanks," you mean the propane 4 tanks? 5 A. The propane. If he didn't, he bought -- he was 6 in the propane business. In fact, he may still be 7 south of the river, but he -- I guess he bought 8 propane from them back then. 9 Q. Bill Bearden? 10 A. Yes, he's still -- he's retired from REA. 11 Q. Joe Powell? 12 A. He's just retired, county judge. 13 Q. Janet Powell? 14 A. His wife. 15 Q. Loy Randolph? 16 A. He used to be on the city council. He's 17 retired. He's elderly, lives on Second Street. 18 Q. Monty Canady? 19 A. He's retired from the gas company, and he lives 20 up on -- oh, what's the name of that street up there, 21 on River, Ozark Estates. 22 Q. Was he part of the gas company that had those 23 propane tanks, or a different gas company? 24 A. No, Arkansas Western Gas. 25 Q. Paul Stacy?	1 A. Yeah. 2 Q. Jim Bearden? 3 A. Yes, didn't we just mentioned him? 4 Q. I don't think so. 5 MR. BROCKETT: Bill Bearden was the 6 other one. 7 A. Oh, Bill Bearden, yeah. Yeah, I was thinking 8 of Jim. Jim is retired. What did he retire from, 9 REA, I think. 10 Q. Barbara Bearden, would that be -- 11 A. His wife. 12 Q. Jim Bearden's wife? 13 A. Yes. They work down at the museum here. They 14 are volunteer workers down there. 15 Q. Theron Hill, goes by Sonny? 16 A. Sonny Hill, yes. He's retired, and he also 17 volunteers at the museum. 18 Q. Dee Gober? 19 A. He's, he lives on Third Street. He's retired 20 from the -- well, he was the sheriff here for several 21 years. 22 Q. Brenda Mann? 23 A. She lives on Third Street also. She's 24 disabled. She's, she's still here, yeah. 25 Q. George Lindley?

32 (Pages 125 to 128)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 129

1 A. **He's a realtor. He's still here. He lives...**
 2 Q. Bill Brockett, that would be?
 3 A. **Yeah, he's here, realtor.**
 4 Q. Christopher Brockett's father?
 5 A. **Yes.**
 6 Q. Gonna be a witness. Rick McClellan?
 7 A. **Yeah, he's, he's an ex-councilman, and he does**
 8 **construction work, and he still lives here.**
 9 Q. Sue McClellan, would that be --
 10 A. **His wife.**
 11 Q. Edgar Cagle?
 12 A. **He's a retired barber, and he lives out, I**
 13 **think, north of town.**
 14 MR. BROCKETT: Edward was released.
 15 Edward was released, Cagle.
 16 MR. TUCKER: Oh, released?
 17 MR. BROCKETT: Yeah.
 18 MR. TUCKER: Okay.
 19 MR. BROCKETT: We agreed not to call
 20 him.
 21 BY MR. TUCKER:
 22 Q. Andrew Post?
 23 A. **Yes, he's one of the Posts down at Altus.**
 24 Q. Oh, the wine family?
 25 A. **The wine family, yes.**

Page 130

1 Q. You have already told me about Steve Outlaw.
 2 Matthew Joseph Post, would he be another one of the
 3 Posts?
 4 A. **Same, one of the Posts.**
 5 Q. Altus. Ralph Johnson?
 6 A. **Yes, he's retired, abstract owner down there.**
 7 Q. Craig Birchler?
 8 A. **I don't know where he's at. He's still around.**
 9 **I haven't seen him in a while, but he, he used to**
 10 **work for the city. But he moved in here a few years**
 11 **ago when we hired him as the water department**
 12 **superintendent.**
 13 Q. Is he still superintendent?
 14 A. **No. Actually he worked for Mickle Wagner, I**
 15 **think, the engineering firm out of Fort Smith.**
 16 Q. Pat Mickle?
 17 A. **Yes, that's the owner of Mickle Wagner.**
 18 Q. That's out of Fort Smith?
 19 A. **Fort Smith, yes.**
 20 Q. And what type of business is that again?
 21 A. **They're engineers. They're the city engineer.**
 22 Q. Alice Brooks?
 23 A. **Yes, she's a retired school teacher. She lives**
 24 **over by the Senior Citizens, I think.**
 25 Q. Francis Smith?

Page 131

1 A. **Francis Smith, which -- is she the one at the**
 2 **library? I'm not --**
 3 MR. BROCKETT: She's a teacher.
 4 A. **Teacher?**
 5 Q. Is she retired?
 6 A. **I don't know. Is she?**
 7 MR. BROCKETT: I don't think so.
 8 BY MR. TUCKER:
 9 Q. Okay. Jesse Mason?
 10 A. **Yes, he's -- he owns a motel up here the, in**
 11 **the dip there, the -- what is it, Ozark Motel, I**
 12 **guess?**
 13 Q. John Milam?
 14 A. **Yes, he's -- he works out at Cass Job Corps.**
 15 **He's the heat and air person.**
 16 Q. Cass Job Corps, would that be on the road we
 17 call the Pig Trail?
 18 A. **Yes, uh-huh, out north.**
 19 Q. Melinda Keeton?
 20 A. **She's in Texas now. She's a retired school**
 21 **teacher.**
 22 Q. Former city council?
 23 A. **Yes.**
 24 Q. It looks like Jesse Mason and John Milam were
 25 both former city council, too, at some point?

Page 132

1 A. **Yes.**
 2 Q. Sonya Eveld?
 3 A. **She's the present city clerk.**
 4 Q. Tommy Watson?
 5 A. **Tommy Watson, I don't know Tommy, I don't --**
 6 MR. BROCKETT: Abstract.
 7 A. **Abstract, okay, yeah. He's -- I knew Tommy. I**
 8 **didn't know his last name.**
 9 Q. Adams Abstract?
 10 A. **Yes.**
 11 Q. Royce Gattis?
 12 A. **Yes, he's still around.**
 13 Q. It looks like he works with Chamber of Commerce
 14 and Main Street Ozark?
 15 A. **Yes.**
 16 MR. TUCKER: Let's take a short break.
 17 I think I'm about done.
 18 THE VIDEOGRAPHER: We're going off the
 19 record. It's 12:16 p.m.
 20 (Short break)
 21 THE VIDEOGRAPHER: We are back on the
 22 record. It's 12:22 p.m.
 23 BY MR. TUCKER:
 24 Q. Mr. Mayor, do you know if a crossing just to
 25 the east of the depot went back in has anybody

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 133 1 performed any type of risk assessment or hazard 2 analysis of that, to your knowledge? 3 A. Not to my knowledge. 4 Q. If the crossing were to go back in east of the 5 depot, do you know what type of traffic control 6 devices would be installed there? Have you seen any 7 plans or anything for that? 8 A. They were talking about lights, you know, bars 9 that come down and all of that, but that was earlier 10 on. I haven't... 11 Q. And when you say, "They were talking about 12 that," would that be Main Street Ozark? 13 A. Main Street, yes, sir. 14 Q. Have you ever seen any plans for the roadway 15 approaches leading up to the, the tracks if the 16 crossing were to go back in? 17 A. No. No, sir. 18 Q. Mr. Mayor, have you understood the questions 19 that I've asked you here today? 20 A. Yes, sir, I think so. 21 Q. Have I given you a full and a fair opportunity 22 to answer those questions? 23 A. Yes, sir. 24 Q. Is there anything that you would like to add 25 before I stop asking questions.	Page 135 1 Q. Okay. And all of the maps that you've brought 2 today, your position is, does not show Oliver Street; 3 correct? 4 A. They don't show, no. 5 Q. Okay. I'm going to show you what's Exhibit 7. 6 It looks like. Is that correct, Exhibit 7? 7 A. Yes. It says 7. 8 Q. Okay. And based on where Oliver Street, the 9 crossing is located, would you agree that it would 10 not be on that map? 11 A. It would not be on there. 12 Q. Okay. 13 A. I think it was showing the plans, the original 14 plans was all of this to be built on the north side 15 of the river. That's why I brought that. 16 Q. Okay. 17 A. I had that. 18 Q. And, also, I want to refer to, what's it called 19 here, B, the railroad crossing tower. Do you see 20 that on there? 21 A. Yes. 22 Q. Would you state compared to the depot where is 23 that located? Is that to the west? 24 A. That would be right off of Third Street, is 25 what it would be, west.
Page 134 1 A. No. Just -- my main concern is, you know, if 2 the lawsuit goes, or if it was meant to be, that's 3 fine, but if it's -- my concern is it costs the 4 taxpayers a lot of money, and safety. That's, that's 5 where I'm at on it, so I'm, I'm open either way, I'll 6 let you know. 7 I just -- from the experience I've had and 8 things, I just -- that's my feelings on it. That's 9 all I, all I have. 10 Q. All right. Mr. Mayor I certainly thank you for 11 your time. I pass. 12 A. Thank you. I appreciate it. 13 EXAMINATION 14 BY MR. BROCKETT: 15 Q. I've got some questions for you. 16 A. Oh, okay. 17 Q. Some of those maps that you had stated, such as 18 the one that Ms. Powell gave you -- 19 A. Yes. 20 Q. -- is that right, you said you got it two weeks 21 ago? 22 A. Two, three weeks ago, something like that. 23 Q. Okay. Why did you not provide that copy to me? 24 A. I just had it in here. I had some maps. I 25 didn't think about it.	Page 136 1 Q. Okay. And that's nowhere near -- is that 2 closer to the jail? 3 A. It would have been right beside the jail. 4 Q. Okay. Are you aware of whether or not Main 5 Street Ozark has any land that it purchased at that 6 location? 7 A. Not that I know of. 8 Q. Okay. I want to show you what's Exhibit 3. 9 A. Uh-huh. 10 Q. That is Exhibit 3? 11 A. Yes. 12 Q. Would you agree that the south side of the 13 railroad tracks there is a structure on that map? 14 A. South side structure, okay. Are you talking 15 about that right there? 16 Q. Yes, sir. 17 A. Yes. 18 Q. Okay. I want to show you what's Exhibit 2. Do 19 you agree that's a representation of that? 20 A. Okay. 21 Q. Would you agree that's a representation of the 22 structure, or of Exhibit 2? 23 A. Okay. What, what map was this? 24 Q. That's Exhibit 2. If you turn to the next 25 page, it's a larger map, so it had to be done --

34 (Pages 133 to 136)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 137	Page 139
1 A. Oh, okay -- 2 Q. -- in copies. 3 A. -- that's part of the -- yes, that's, that's 4 the one I got from Ms. Powell. 5 Q. And you are saying that one does not show 6 Oliver Street? 7 A. Not that I can see it there. 8 Q. Okay. It will be easier if I point it to, 9 would you agree that C, it says here at the bottom, 10 it says, See insert. Do you agree with that? 11 A. Okay. 12 Q. Okay. And you agree it says, See inset? 13 A. It says, See inset. 14 Q. Okay. And here's our inset. Would you agree 15 with that? 16 A. Yes. 17 Q. And would you agree, right here there's a road 18 coming off River Street -- 19 A. Uh-huh. 20 Q. -- that looks to cross the railroad tracks; 21 would -- 22 A. Yes. 23 Q. -- you agree with that? Would you agree that 24 Sixth Street goes down past the railroad tracks? 25 A. Well, that's the -- oh, what do you call it --	1 that? 2 A. Yes. What information I have, yes. 3 Q. Okay. Why have you not taken it before the, 4 the city council and asked them to vote to terminate 5 the lawsuit? 6 A. I'm not sure that I get a, on an up-and-down 7 vote, I don't know how that would go, and if I, if 8 I -- I thought about it, but the way they talked, but 9 then when you get in front of the council, my 10 experience, a lot, a couple of them will go -- you 11 know, they are not strong people. 12 Q. Okay. The way who has talked? 13 A. Do what now? 14 Q. The way who has talked? 15 A. Well, I'm not going to mention their names. 16 Q. Well, you're under oath, so I'm asking for the 17 names. 18 A. Well, I don't want to give their names, so 19 what's that mean? 20 Q. Well, we can get the judge on the phone, I 21 mean, if you want to do it that way. 22 A. Well, Roxie Hall, she's, she's against it, but 23 she, she won't vote, she won't go -- I don't know if 24 she would go for it or not. And I haven't talked -- 25 I don't know how Victoria would go on it.
Page 138	Page 140
1 the plat, but they never did go across, you know, the 2 railroad tracks. I mean, that's just a -- 3 Q. Would you agree that Fourth Street comes to the 4 railroad tracks? 5 A. No. I mean, that shows it there, but it 6 doesn't come off of, it doesn't cross off of River 7 Street. 8 Q. Are you saying Fourth Street is not the old 9 ferry road? 10 A. Definitely not. 11 Q. Okay. Where is the ferry road at? 12 A. Well, it's on past this up there where it went 13 down and went sideways. 14 Q. Okay. Would you agree there was a ferry road 15 that crossed the railroad tracks? 16 A. Yeah, not a road. It was a ferry -- I mean, 17 not a city street. It wasn't. 18 Q. Okay. Now I think we can both agree that 19 you're against the lawsuit? 20 A. Like I said, I'm not for or against, but I 21 don't want it to cost the taxpayers a lot of money 22 and get some family killed down there crossing, 23 crossing the railroad track. 24 Q. Okay. Did you -- but you did run on the basis 25 of not pursuing the lawsuit; would you agree with	1 Q. As far as voting for or against it? 2 A. Yes. 3 Q. So you are saying Roxie has referenced to you 4 in private that she is against the lawsuit? 5 A. Here lately she has, yes. 6 Q. Okay. And who else? 7 A. Victoria's asked -- questions they've asked, 8 you know, that's what makes me think that, that they 9 would. I hate to give their names, but -- that was 10 in confidential that they -- 11 Q. What about Rex Anderson? 12 A. He's not for it. I shouldn't be asking, 13 speaking for somebody else. Now, if we -- I can 14 bring it before the council. 15 Q. Okay. 16 A. Harvey Waters is definitely for the lawsuit, if 17 you want his name there, and who... 18 Q. How often have you had conversation with the 19 railroad? 20 A. I hadn't in a while, not with the, other than 21 Brandon, when he called to congratulate me on the 22 election. 23 Q. Okay. 24 A. And wanted to -- and mentioned what he did to 25 the council the other night, so I thought it would be

35 (Pages 137 to 140)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 141 1 good. 2 Q. Okay. Back in 2008, I believe you mentioned 3 that first, that you had conversations with them, the 4 railroad? 5 A. Yes. Charlie Felkins is the first one that I 6 had conversation, conversation with. 7 Q. Okay. And was that after or before the 319,000 8 was set out? 9 A. It was after. 10 Q. Okay. After that vote? 11 A. Yeah. 12 Q. Okay. And you started your own investigation 13 then? 14 A. Yes. 15 Q. Okay. What is your definition of a sweeping 16 curve? 17 A. Well, a long sweeping curve that, not a -- I 18 don't guess you would say it a sharp curve, but just 19 a long sweeping curve. 20 Q. Okay. 21 A. I never thought about it, but I would think 22 maybe -- 23 Q. Well -- 24 A. -- that's what -- 25 Q. -- when Ms. Tucker stated sweeping curve, you,	Page 143 1 the Corps? 2 A. I don't have that in front of me. Randy 3 Gramlich, Gramlich, G-r-a-m-l-i-c-h. Is that on 4 that? Jason, Jason Gramlich. And if I knew -- and 5 Randy Hathaway and, Hathaway and Colonel Lee, or 6 Colonel Paul, Courtney Paul, and -- there's four of 7 them that came by the other day, Mr. Bach, B-a-c -- I 8 don't know if I'm pronouncing that right, but he's 9 over the real estate. 10 And then there was a Kevin -- I'm not 11 sure -- Nichols, but, anyway, there was four of them 12 that came by, came to my office last week. 13 Q. Okay. And you have stated that colonel Paul 14 told you last Wednesday that they were not going to 15 allow any type of transient dock at the north 16 location; correct? 17 A. He said he wasn't putting anything in the water 18 down there. 19 Q. Okay. And we had a city council meeting on 20 Monday? 21 A. Uh-huh. 22 Q. Why wasn't that brought up the Monday of city 23 council meeting? 24 A. It wasn't on the agenda. 25 Q. Okay.
Page 142 1 you readily agreed with it, so I'm just trying to 2 understand what your definition is. 3 A. Well, it's kind of a long sweeping curve. 4 Q. Okay. Do you agree that there's a crossing at 5 the dam right before you enter that -- 6 A. Yeah, everybody knows there's a crossing there. 7 Q. Okay. I'm talking about the one at the dam. 8 A. Yes. 9 Q. Okay. You mentioned that you know, I guess 10 from either discussions with your friends or 11 discussions from others, that if a train enters a 12 crossing and hits the brakes there is a potential for 13 derailment? 14 A. Uh-huh. 15 Q. You'd also -- 16 A. Yes. I should have said "yes." 17 Q. Would you also agree that if it is about to 18 enter a curve and hits the emergency brakes that a 19 derailment could also occur? 20 A. Yes. 21 Q. Okay. How often do you talk to the Corps, the 22 Corps of Engineers? 23 A. Well, since I've elected mayor, they've been 24 contacting me. 25 Q. Okay. And who, who do you speak to at the, at	Page 144 1 A. And I'm not going to get into a cat fight there 2 when they all come up there and sit on the front row 3 just waiting for me to say something so they can all 4 jump on me. And when I bring something up, I'll be 5 prepared for it. 6 Q. All right. Now you also mentioned that to your 7 knowledge there was the -- the road that we've 8 identified, the gravel road, let's just refer to a 9 gravel road, it was not adopted by the city; correct? 10 A. Not that I know of, no. 11 Q. Okay. Do you have evidence that River Street 12 was adopted by the city? 13 A. I have never checked on River Street. 14 Q. What about Third Street? 15 A. Third Street, no, I haven't, haven't -- the 16 reason most all of the streets, you know, they -- in 17 fact, the last street which we brought into the city, 18 you know, we, we had to go through the readings and 19 all of that and adopt it and make sure it was up to 20 standard and all of that. 21 That's the way the city does before they 22 take in a street. If they don't, you know, we don't 23 want to have problems and have to re-do the street 24 years, years coming, you know. 25 Q. Okay. And do you know if that was done back in

36 (Pages 141 to 144)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 145	Page 147
1 the 1870's? 2 A. Probably not. I wouldn't think so. 3 Q. What about the 1880's? 4 A. I don't know. 5 Q. Do we have any minutes from the 1870's? 6 A. No, not that I know of. 7 Q. What about the 1880's? 8 A. Not that I know of. 9 Q. Up to the 1920's? 10 A. I think isn't that about when they started? 11 Q. About '29, I believe -- 12 A. Twenty-nine. 13 Q. -- is the earliest that we have. 14 A. Uh-huh. 15 Q. Okay. You also stated there was no public use 16 of this location after the flood? 17 A. Not that I know of. 18 Q. Are you aware that 17 people signed affidavits 19 that stated they continued to use that location, or 20 not affidavits, statements? 21 A. No. For what? 22 Q. That they continued to go down there and hunt, 23 fish, shoot guns, shoot turtles? 24 A. No. 25 Q. You have not seen those?	1 the letter? 2 A. To the best of my knowledge. Now, that's what, 3 you know -- I, I couldn't be certain on that, but I 4 think it was adjourned. 5 Q. Okay. Do you remember if he actually read the 6 letter or if he just held it up and shook it? 7 A. I think he just held it up and explained to us 8 what it was about, you know, to the best of my 9 knowledge, but that's a while back, and asked if 10 anybody had any input on it or whatever. 11 Q. Okay. Have you been involved with the, either 12 the transient dock on the north side discussion or 13 the marina on the south side discussion with Main 14 Street? 15 A. No. 16 Q. Okay. Have you attended any Main Street 17 meetings? 18 A. No. 19 Q. Okay. You also mentioned that the trail would 20 have to be on the Union Pacific property? How -- 21 what have you seen that would -- 22 A. Well -- 23 Q. -- support that answer? 24 A. -- if their right-of-way is 50 feet either side 25 of the track, it would, it would be. And also it's a
Page 146	Page 148
1 A. No, I haven't seen those. 2 Q. Okay. So if the city council meeting minutes 3 reflect that Ms. Key came to the city council and 4 provided those statements to the city council, are 5 you saying that's incorrect? 6 A. I'm not saying she didn't, but I don't, right 7 now I don't recall seeing them, but. 8 Q. All right. And then you also talked about a 9 quiet zone. You said there was a resolution to 10 declare that a quiet zone? 11 A. As far as I know, the best of my memory. Now, 12 I'm sure there was, because it was a five-one vote on 13 it. I don't think it was an ordinance. Well, it 14 shouldn't have been, but it was a resolution that, to 15 ask the railroad, railroad people to quit blowing the 16 horn. And so I guess Todd handled that, and it 17 wasn't long that it was a quiet zone. 18 Q. Okay. Did Todd often do things that weren't 19 necessarily legal? 20 A. Well, that part I wouldn't know. He did -- 21 Q. Was he convicted of a felony? 22 A. He did something that was illegal, yes, and he 23 went to prison for it. 24 Q. Okay. And you also state that you believe that 25 the 2001 meeting was adjourned at the time he read	1 federal law that those trails can't run parallel to a 2 railroad track, is what I was going by that... 3 Q. Okay. Have you seen the, the Garver 4 Engineering reports showing where those trails would 5 be? 6 A. No. 7 Q. So you're not aware that there is an eight foot 8 section between the railroad right-of-way and the, 9 and the shoreline? That's the narrowest area is 10 about eight foot? 11 A. No, I -- I had heard it discussed, I think, 12 probably, but I don't see -- in some places the water 13 is right up there to the, to the, to that gravel 14 where the railroad -- I don't know how you would put 15 anything in there without being in the water. 16 Q. Okay. Have you -- again, have you seen the 17 plans? 18 A. No. 19 Q. Have you asked for those plans? 20 A. No. 21 Q. Okay. And going back to the -- as far as you 22 know, most of the original downtown seats, or 23 streets, have not been accepted by ordinance; 24 correct? 25 A. Do what now?

37 (Pages 145 to 148)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 149 1 Q. The original downtown area, 1870's, 1880's 2 streets, those have not been accepted by ordinance: 3 correct? 4 A. No, I'm not saying that. 5 Q. Have you seen ordinances? 6 A. I haven't looked for them. I don't know that. 7 Q. I believe we just said that the earliest you've 8 seen is 1929. 9 A. No. You were talking about when we start 10 keeping, keeping meeting, minutes of the meetings is 11 what we were talking about. 12 Q. Okay. So do you believe there are some 13 ordinances somewhere? 14 A. I don't know about that. I hadn't ever had a 15 reason to look. I know streets, when we accept a 16 street now, it has to be dedicated, go through the -- 17 you know, the superintendent has to check the street, 18 or the base and all of that, and they have to have it 19 up to code before we ever accept it. 20 Q. Okay. Have you ever closed a street since you 21 have been on city council? 22 A. Yeah, I'm sure we probably have. Yeah, we've 23 closed streets, yeah, by the bank up here. 24 Q. Uh-huh. Do you remember that process? 25 A. Yeah. We had to go through the process of -- I	Page 151 1 '96 all show a walking trail? 2 A. Well, it's illegal to put a walking trail in 3 there. 4 Q. And what's the basis for that? 5 A. Well, I don't know. It's -- I just don't see 6 where you can put it in there if the water is up to 7 the, up to the -- 8 Q. You said it's illegal. What, what's your basis 9 for saying it's illegal? 10 A. For the walking trail? 11 Q. Yes. 12 A. Federal law that says a walking trail cannot be 13 in so many feet of a railroad because of hazardous, 14 the danger. 15 Q. Okay. Is it within 50 feet, or -- because 16 we're saying that there is outside of a 50 foot -- 17 A. Yeah, I don't remember the exact. There is a, 18 so many feet there. I don't remember what it is. I 19 don't have that in front of me. I just remember 20 reading that stuff off of the internet. 21 Q. Okay. Do you think you can get me a copy of it 22 and provide it to me? 23 A. I would look and see if I could find one, yeah. 24 Q. Could you also look and see if you see any 25 ordinances, recordings, plats, or any other
Page 150 1 don't know exactly how, what we did, but have it 2 closed. 3 Q. Okay. Do you remember voting on that? 4 A. Yeah, we voted on it. 5 Q. You also mentioned Gar Creek would be a more 6 suitable area. Are you aware there's also sewer line 7 over there? 8 A. Yeah, I know all of that. That's just a 9 general, the general conversation that people talk 10 about that, that most marinas are off, you know, 11 backwater, and that would have been a good place if 12 it wasn't for those obstacles there. I mean, nobody 13 seriously said, you know, put it there on Gar Creek. 14 Q. Okay. Are you aware that the Corps of 15 Engineers approved this spot for a marina back in 16 1980? 17 A. I've heard that, yeah. 18 Q. Okay. You also stated there was no other 19 reason to cross the railroad tracks if the transient 20 dock couldn't be provided over here. What, what 21 provides that information to you? 22 A. I don't know what would, what would be the 23 reason to, to go across the railroad. If there's 24 nothing there, you're into the water. 25 Q. Well, there's -- the plans from '94, '97, and	Page 152 1 information regarding any of the city streets 2 downtown? 3 A. I can see if we can find some. 4 Q. Also, you talked to Morris Jenkins, Chief 5 Legislative Auditor, regarding payment out of the 6 grant money? 7 A. Yes. 8 Q. When was that? 9 A. Oh, let's see, three or four months ago, 10 something like that. 11 Q. Okay. Did you bring that to the attention of 12 the city council? 13 A. No, I haven't. 14 Q. Why not? 15 A. Because I don't want to have to pay it out of 16 the general fund, and I voted not pay it to start 17 with, if you will remember. 18 Q. I agree. 19 A. Okay. 20 Q. I believe it was a five-to-one vote: correct? 21 A. It was. 22 Q. Okay. Now, you said you don't remember reading 23 the Complaint, or you have read the Complaint? 24 A. What complaint? 25 Q. The amended and restated Complaint that was

38 (Pages 149 to 152)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 153

1 filed on behalf of the City of Ozark.

2 **A. I have seen the document. I don't, I couldn't**

3 **tell you. I guess I have. I don't know.**

4 Q. Okay. Do you remember in December of 2014

5 after the December 11th hearing that is referenced in

6 your transcript stating there was numerous errors in

7 the Complaint?

8 **A. Errors of who, who made?**

9 Q. I guess you're saying that I made.

10 **A. Oh, I don't -- oh I didn't -- I read it, but I**

11 **didn't zero in on anything.**

12 Q. Okay. So sitting here today you don't remember

13 any errors?

14 **A. Are you talking about typo errors or --**

15 Q. No. I'm talking about factual statements.

16 **A. I would have to look at it and see what it...**

17 Q. Okay. As you sit here today would you agree to

18 write up those errors and provide those to me?

19 **A. No. That's not my job.**

20 Q. Okay. Do you want me to get the Complaint? I

21 mean, we can go all day. I can get the Complaint,

22 and we can go through it word by word, or you can

23 agree to provide it to me later.

24 **A. I didn't know I was under cross exam --**

25 Q. Yes, you are, and you are under oath.

Page 154

1 **A. I don't care about the oath, but I'm not the**

2 **one that got us in the lawsuit.**

3 Q. You are my Plaintiff, and you are sitting here

4 today sandbagging me, so you are going to answer the

5 questions I --

6 **A. What do you mean by "sandbagging"?**

7 Q. Just like you bringing in maps when I've got

8 ten maps showing Oliver Street.

9 **A. You don't like -- I was told to bring this**

10 **stuff in the --**

11 Q. Yes.

12 **A. -- affidavit.**

13 Q. And you are my Plaintiff. Do you agree that

14 you represent the City of Ozark?

15 **A. I do represent, but I don't represent a**

16 **frivolous lawsuit, Chris.**

17 Q. Are you saying it's frivolous?

18 **A. Yes, I am.**

19 Q. Okay. All right. If you will give me a few

20 minutes, I'm going to get the Complaint.

21 THE VIDEOGRAPHER: Do you want to go

22 off the record?

23 MR. BROCKETT: Yes.

24 THE VIDEOGRAPHER: Okay. We are going

25 off the record. It's 12:45 p.m.

Page 155

1 (Short break)

2 THE VIDEOGRAPHER: We are back on the

3 record. It's 12:47 p.m.

4 BY MR. BROCKETT:

5 Q. Do you remember how much land was down south of

6 the railroad tracks prior to the flood?

7 **A. Gosh, no, I wouldn't know that.**

8 Q. Okay. If I represent to you there was about

9 15.5 acres down there, does that sound about right?

10 **A. Probably was.**

11 Q. Okay. Now have you gone through the exhibits

12 that were attached to the Complaint?

13 **A. No.**

14 Q. Okay. Do you know if anyone purchased land or

15 owned land down south of the railroad tracks?

16 **A. Do I know anybody that owned, purchased land**

17 **down there?**

18 Q. Do you know whether people owned the land down

19 south of the railroad tracks?

20 **A. Oh, I assume they did, yeah.**

21 Q. Okay.

22 **A. Because the Corps bought, you know, settled and**

23 **bought land when they flooded it there.**

24 Q. That's right. Now you have been provided

25 copies of city council meetings showing where the

Page 156

1 land was leased from a Nelsie Oliver for the city

2 dump; is that correct?

3 **A. I don't know about that.**

4 Q. You don't remember seeing that?

5 **A. A lease from Oliver?**

6 Q. Nelsie Oliver.

7 **A. No.**

8 Q. You don't remember seeing that?

9 **A. Was that that packet that Royce Gattis put**

10 **together? I guess it was.**

11 Q. I'm going to refer to you, let's go ahead and

12 mark it, I guess, as Defendants' 1. Or, actually,

13 you're doing 1. I'll do Defendants' --

14 MR. BROCKETT: Sorry. You just want

15 to keep going?

16 MR. TUCKER: You can do it however you

17 want to, but we're Defendants, so if you

18 want to mark them Plaintiff's 1 --

19 MR. BROCKETT: Oh, sorry, Plaintiff's

20 1.

21 MR. TUCKER: -- you can.

22 MR. BROCKETT: Plaintiff's A. Let's

23 do it as Plaintiff's A.

24 (Exhibit Plaintiff's A was marked.)

25

39 (Pages 153 to 156)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 157 1 MR. BROCKETT: June, 1940 minutes. 2 BY MR. BROCKETT: 3 Q. Okay. Let me see exactly what it is. Now do 4 you know, Mayor McNutt, if the City of Ozark did 5 lease land for the city dump, or did it own the land 6 that the city dump was on? 7 A. I wouldn't know about that. 8 Q. Okay. 9 A. Did they lease -- I guess -- 10 Q. You don't remember? 11 A. Remember what? 12 Q. Whether or not the -- you don't know? 13 A. I don't know if the city leased it or owned it 14 or what. 15 Q. But you remember the city dump being down 16 there? 17 A. Oh yeah, yeah. 18 Q. Okay. And you have actually visited the city 19 dump? 20 A. Many times. 21 Q. And you have seen the houses down there? 22 A. Yeah. Sam Collins lived down there. 23 Q. Okay. And you said that to your knowledge it 24 was not referred to as Oliver Street; is that 25 correct?	Page 159 1 Q. Now, Mr. McNutt, have you seen city maps that 2 also show Oliver Street on there? 3 A. Yes, I have. 4 Q. Okay. But yet you didn't bring any of those 5 today; why not? 6 A. I didn't -- no. I've just seen them. I don't 7 have any. 8 Q. Okay. 9 A. But those were just recent maps that I've seen. 10 And one of the maps was two years ago, approximately. 11 It was where the Christmas parade was going, and it 12 was a regular city map, and it was penciled in 13 "Oliver Street." 14 Q. Okay. One final question, and then I will let 15 you out of here. Why would you -- why do you 16 classify this as a frivolous lawsuit? 17 A. Well, I just don't think it has -- I just 18 don't -- talking to the older people around, and 19 nobody ever heard of Oliver Street, and it was not a 20 street -- it was not a usable street. 21 It was, it was not maintained by the city 22 or anybody, and -- I remember mud puddles, and people 23 getting stuck, and branches, leaves, poles and things 24 where they got unstuck. 25 And it was that way for years and years
Page 158 1 A. I'd never heard of Oliver Street until a year 2 and a half ago or two years, whenever that was. 3 Q. Okay. I'm going to refer you to what's Exhibit 4 K to the Complaint. 5 A. Do you have any idea of how long we are going 6 to be? 7 Q. I am not going to waste too much more of your 8 time. 9 A. I'll -- 10 Q. I want to show you what's been -- 11 A. I'm a diabetic, and I need to eat something 12 before too much longer, so. 13 Q. Okay. I'll -- just a few more questions, then, 14 and I'm going to let you out of here. I'm going to 15 show you what's been, that's going to be marked as 16 Plaintiff's B. 17 (Exhibit Plaintiff's B was marked.) 18 Q. Can you identify that? 19 A. House numbers. These look like house numbers. 20 Q. Have you ever seen one of those before? 21 A. I don't know. 22 Q. Okay. This is the same one. Would you agree 23 that on there there are certain addresses listed on 24 Oliver Street? 25 A. Okay. Yeah, I think I saw this.	Page 160 1 when I was associated with it, when we lived down 2 there by it. And I just never considered it a city 3 street. 4 And like a said while ago, the, Ralph 5 McKinney said it was a no man's land, said the city 6 never owned it, never maintained it. And I'm just 7 going by what older residents have said. 8 But, now, they could have been back before 9 my time. A generation or two before it might have 10 been something, but -- 11 Q. Okay. And I need to -- 12 A. -- but we never called it Oliver Street. 13 Q. Let me show you one last exhibit real quick. 14 I'm going to mark it Exhibit C. 15 (Exhibit Plaintiff's C was marked.) 16 BY MR. BROCKETT: 17 Q. And that's the blueprint. I believe it is 18 Exhibit J, a copy of a blueprint that is attached to 19 a 1942 city ordinance. Can you identify that? 20 A. Okay. That's a map, depot. Is this what 21 you're calling Oliver Street right here? 22 Q. It has a road here; correct? 23 A. Well, it's a penciled-in road; can you see 24 that? 25 Q. That's not penciled in on that blueprint.

40 (Pages 157 to 160)

Tommy McNutt 2/11/2015

City of Ozark v. Union Pacific Railroad Company

Page 161 1 A. Well, it's -- 2 Q. Have you seen the original of the blueprint? 3 A. No. 4 Q. It's at the city council. 5 A. Will you agree that that's a rough drawing on 6 that? If that's all -- if we're talking about the 7 same street, I have seen the map where they are all 8 nice and neat streets, and then, and then Oliver 9 Street, as y'all call Oliver Street, is penciled in 10 and don't look like it was original. 11 Q. Would you agree that this was included in the 12 city council minutes? 13 A. I'll agree that that's what that is. 14 MR. BROCKETT: Okay. I don't have any 15 further questions. 16 MR. TUCKER: Nothing further, 17 Mr. Mayor. Thank you for your time. 18 THE WITNESS: Thank you. 19 THE VIDEOGRAPHER: This concludes the 20 deposition. We are off the record at 12:55 21 p.m. 22 (The deposition was concluded at 12:55 p.m.) 23 24 25	
Page 162 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS) 3)ss. 4 COUNTY OF SALINE) 5 I, JANESE FERGUSON SMITH, CCR, RPR, a 6 Notary Public in and for Saline County, Arkansas do 7 hereby certify that the facts stated by me in the 8 caption of the foregoing matter are true; and that 9 the foregoing matter was transcribed by me, to the 10 best of my ability and understanding, from my machine 11 shorthand notes taken at the time and place set out 12 in the caption hereto. 13 In accordance with Rule 30(c) of the 14 Rules of Civil Procedure, review of the transcript 15 was waived by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither 17 counsel for, related to, nor employed by any of the 18 parties to the action in which this proceeding was 19 taken; and, further that I am not a relative or 20 employee of any attorney or counsel employed by the 21 parties hereto, not financially interested or 22 otherwise, in the outcome of this action. 23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 24 this, the 11th day of February, 2015. 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000	

41 (Pages 161 to 162)