

AFFIDAVIT

Comes Bill Huston, upon oath, and after being duly sworn, states as follows:

1. I am currently employed by Union Pacific Railroad Company ("UPRR") as a Manager of Train Operations. I have been in the railroad transportation business since 1997, and with UPRR since 2004. My office is located in Van Buren, Arkansas. My responsibilities include train operations for UPRR's service in and through the City of Ozark.

2. The mainline track at issue is maintained to Class 4 standards pursuant to the regulations promulgated by the Federal Railroad Administration. Under those federal regulations, the speed limit for freight trains on Class 4 track is 60 miles per hour. Approximately 10-20 trains travel over the mainline through the City of Ozark each day. These trains often carry hazardous materials such as petroleum, methyl bromide, yellow phosphorus, alcohol polyethoxylate, sodium hydrosulfide, and sodium hydroxide.

3. Parallel to the mainline track on the northside are two side tracks that are commonly referred to as house tracks. These house tracks are often used to set out cars.

4. In addition, parallel to the mainline track on the southside is a side track that serves two purposes.

5. The first purpose of this side track is as a storage track. This is the longest storage track on the Van Buren subdivision, which runs between Little Rock and Van Buren. If the proposed crossing existed, UPRR would lose approximately 600 feet of storage capacity because 300 feet on both sides of the crossing would be required to remain clear so that people traversing the crossing from the south would be able to see trains approaching the crossing on the mainline.

Currently, approximately 60 cars, depending on length, can be placed on this side track. If the proposed crossing existed, the storage capacity would be cut by approximately 12 cars. Stated differently, if the proposed crossing existed, the storage capacity would be reduced by 20%. In addition, the proposed crossing would unreasonably interfere with railroad operations by requiring additional switching of railcars at the crossing and additional brake safety inspections. The additional switching movements required to break cars that are coupled together and put them back together would double the time involved as compared to the time required for current switching movements. The additional switching movements and brake inspections would increase the risk of personal injury to train crews by increasing the number of times they have to get on and off equipment, tie handbrakes, and walk the train. It would also increase the amount of time that trains are parked on or near the crossing. The longer a crossing is blocked, the greater the risk that people will attempt to crawl under or climb through the train. If a train begins to move while someone is attempting to crawl under or climb through it, that person can be seriously injured or killed.

6. The second purpose of this side track is for train meets. In other words, it allows the mainline track to be open for other rail travel, which enhances the movement of commerce on the track. The side track makes it possible for one train to move from the mainline to the side track so that another train can pass on the mainline.

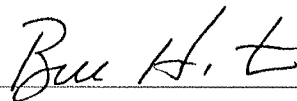
7. When a train uses the side track for train meets, it is possible that the proposed crossing would be blocked for several hours. As previously described, blocking a crossing can increase the risk of personal injury and death to pedestrians. Because of this increased risk, the crew will often cut the train so that it is not blocking the crossing. However, such additional switching increases the risk of personal injury to the crew members as previously described.

Additionally, where a crew needs to cut the train to unblock the crossing, the side track would not work for some train meets because, with 300 feet of clearance required on both sides of the crossing, some trains would no longer fit in the side track.

8. Allowing access to areas so close to UPRR mainline operations would also create security and safety issues affecting the railroad's interests as well as those of the public. For example, the area around the crossing would be accessible to the general public, which increases the risk of vandalism to UPRR property. If there is a pedestrian path placed along UPRR's right-of-way or just off the right-of-way, this would pose a safety risk because a pedestrian often takes the shortest path to his desired destination, which would be a straight line across the tracks. To prevent this, the City of Ozark would need to construct a fence on either side of the crossing for the length of the UPRR right-of-way. A fence, however, would restrict railroad personnel from accessing UPRR property for inspection, work, and needed repairs (including, if a derailment occurred).

9. The proposed crossing endangers both the public and UPRR employees. A freight train coming into Ozark (and approaching the proposed crossing) headed west on the mainline comes around a sweeping curve located next to the Arkansas River. The curve makes it more difficult for a person to look down the tracks and see oncoming trains. If a locomotive engineer had to apply the train's emergency brakes to avoid striking a pedestrian or vehicle on the crossing, this could result in a derailment. The risk of a derailment is increased here because the proposed crossing is in a curve. Given the extremely close proximity of the tracks to the Arkansas River, a derailment at this location could cause severe environmental contamination in view of the hazardous materials that are transported on these tracks.

Further, Affiant sayith not.

A handwritten signature in cursive script, appearing to read "Bill H. T.", is written over a horizontal line.

Bill Huston, Manager of Train Operations

Union Pacific Railroad Company

ACKNOWLEDGEMENT

STATE OF ARKANSAS)

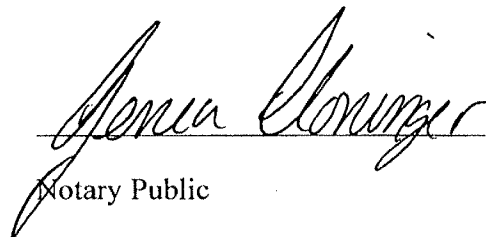
)ss.

COUNTY OF Pulaski)

On this day personally appeared before me, the undersigned Notary Public within and for the County and State aforesaid, duly qualified, commissioned, and acting _____, to me well known as the AFFIANT, in the foregoing AFFIDAVIT and stated that he had executed the same for the purposes therein mentioned and set forth.

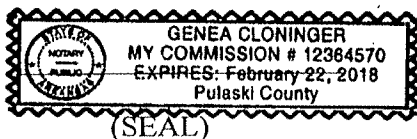
IN WITNESS WHEREOF, I set my hand and official seal as such Notary Public on this

4th day of September, 2014.



Notary Public

My Commission Expires:



Transcript of the Testimony of

Vernon McDaniel

Date: February 12, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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Vernon McDaniel 2/12/2015

City of Ozark v. Union Pacific Railroad Company

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION	1 INDEX
CITY OF OZARK, a Municipal Corporation PLAINTIFF	2
VS. CASE ACTION NO. 2:14-CV-02196-TLB	3 EXAMINATION
UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT. DEFENDANTS	4 By Mr. Tucker 5
DEPOSITION OF VERNON MCDANIEL	5
February 12, 2015	6
BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	7
	8 EXHIBITS
	9 Exhibit No. 86 (McDaniel Notice). 31
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Page 2	Page 4
1 APPEARANCES	1 ANSWERS AND DEPOSITION OF VERNON MCDANIEL
2	2 a witness produced at the request of the Defendants,
3 ON BEHALF OF THE PLAINTIFF:	3 was taken in the above-styled and numbered cause on
4 CHRISTOPHER D. BROCKETT, ESQ.	4 the 12th day of February, 2015, before Janess
5 Sayre & Brockett	5 Ferguson Smith, Certified Court Reporter and Notary
6 401 West Commercial Street	6 Public in and for Saline County, Arkansas, at the
7 Ozark, Arkansas 72949	7 Offices of Sayre & Brockett, 401 West Commercial
8 ON BEHALF OF THE DEFENDANTS:	8 Street, Ozark, Arkansas, at 1:03 p.m.
9 SCOTT H. TUCKER, ESQ.	9 *****
10 JOSEPH P. MCKAY, ESQ.	10
11 Friday, Eldredge & Clark	11
12 400 West Capitol	12 STIPULATIONS
13 Suite 2000	13 It is stipulated and agreed by and between
14 Little Rock, Arkansas 72201	14 the parties through their respective counsel that the
15	15 deposition of VERNON MCDANIEL may be taken for any
16	16 and all purposes according to the Federal Rules of
17	17 Civil Procedure.
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1 (Pages 1 to 4)

Vernon McDaniel 2/12/2015

City of Ozark v. Union Pacific Railroad Company

Page 5 1 VERNON MCDANIEL, 2 the witness hereinbefore named, having first been 3 duly cautioned and sworn or affirmed to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 BY MR. TUCKER: 8 Q. Will you state your full name, please? 9 A. Vernon McDaniel. 10 MR. BROCKETT: This deposition is 11 being taken by agreement of the parties. 12 All objections are reserved except as to 13 the form of the question. 14 MR. TUCKER: And responsiveness of the 15 answer, yes, sir. 16 BY MR. TUCKER: 17 Q. I am sorry. Will you please state your full 18 name, please, sir? 19 A. Vernon McDaniel. 20 Q. Mr. McDaniel, my name is Scott Tucker. I am 21 one of the lawyers representing Union Pacific in a 22 case styled City of Ozark versus Union Pacific 23 Railroad Company. 24 I'm here to take your deposition today 25 because you were listed as a possible witness at the	Page 7 1 ask you a series of questions, and rather than 2 nodding your head up and down, if you will answer 3 them out loud. 4 A. Of course. 5 Q. And if you say "uh-huh" or "huh-uh," I will ask 6 you if that is a yes or a no. 7 A. Of course you will. 8 Q. I'm not trying to be rude. 9 A. I know that. 10 Q. Just trying to make sure we have an accurate 11 record. 12 A. I know that you have to have an accurate 13 record. 14 Q. The court reporter is taking down everything we 15 say verbatim, which means we can't both talk at the 16 same time. 17 A. (Witness nods head.) 18 Q. If you will, please let me finish asking a 19 question before you answer it -- 20 A. Okay. 21 Q. -- even if you already know the answer when I 22 am part way through the question, and I will do my 23 best to let you finish your answer before I ask you 24 another question. 25 A. Fair enough.
Page 6 1 trial of this matter by Plaintiff's attorney 2 Mr. Brockett. Do you understand that? 3 A. I do. 4 Q. Okay. Have you ever given a deposition before? 5 A. No, but I have covered a lot of court hearings 6 for newspapers, so I am familiar with how they are 7 done. 8 And I also understand I can't answer by 9 shaking my head one way or the other, because you 10 can't record that. 11 Q. You're correct. That was going to be a 12 question just shortly down my list. Have you ever 13 testified at a trial before? 14 A. Yes, very briefly years ago, very briefly, yes. 15 Q. Do you remember what it involved? 16 A. No, I don't even remember what it involved, but 17 have you ever heard the name Lonnie Turner? He is a 18 local attorney. 19 Q. I think so. 20 A. I think he called me as a witness one day for 21 something years ago, and I testified, I would say, 22 less than five minutes. 23 Q. Have you ever been a party to a lawsuit before? 24 A. No. 25 Q. As you mentioned, Mr. McDaniel, I'm going to	Page 8 1 Q. You understand you have been placed under oath 2 today? 3 A. I do. 4 Q. The same oath that you would take if you were 5 in a courthouse in front of a judge and a jury? 6 A. Yes. 7 Q. Mr. McDaniel, let me have an agreement with 8 you, if you don't hear one of my questions, will you 9 please ask me to repeat it? 10 A. I will. 11 Q. If you don't understand one of my questions for 12 any reason, will you stop me and ask me to rephrase 13 the question? 14 A. I will. 15 Q. Because we will be relying upon the answers 16 that you give here today in preparation for the trial 17 of this case, and if you answer a question without 18 asking me to repeat it or rephrase it, I will take it 19 that you heard the question and understood the 20 question. Is that fair? 21 A. Yes. 22 Q. Okay. Are you on any medications today that 23 would affect your ability to give truthful and 24 accurate answers in your deposition? 25 A. No.

2 (Pages 5 to 8)

Page 9 1 Q. Mr. McDaniel, if at any time you realize that 2 an answer that you gave to an earlier question was 3 incorrect, will you please stop me and tell me what 4 that was where we can get it corrected on the record? 5 A. Yes. 6 Q. Because even if it's something that may seem 7 insignificant, we want to have as accurate of a 8 record as we can, and you understand that? 9 A. Yes, I do. 10 Q. I don't think we are going to be going all that 11 long today, but I want you to know this is not an 12 endurance contest. 13 If at any time you want to take a short 14 break to stretch your legs, get a drink of water, 15 whatever reason you may have, let me know, and we 16 will take a break. 17 A. Thank you. 18 Q. The only thing I'll ask is that if a question 19 is pending to you that you answer that question, and 20 we'll break after that. 21 A. Fair enough. 22 Q. All right. Do you have any questions you want 23 to ask before we get going? 24 A. No. 25 Q. Mr. McDaniel, what is your date of birth,	Page 11 1 Q. About 20 miles from here? 2 A. Twenty-three to be exact. 3 Q. Did you live in Ozark while you were going to 4 the University of the Ozarks? 5 A. No. I lived in Clarksville. 6 Q. And you said you got a master's in? 7 A. Journalism and social welfare. 8 Q. What year did you get those degrees, 9 Mr. McDaniel? 10 A. BA was '55, MS '60. 11 Q. After you got your master's did you return to 12 Ozark? 13 A. No, I did not. I taught for several years and 14 was in administrative work for several years at 15 University of the Ozarks. 16 Then I taught journalism and served as new 17 public information officer at Southwestern College, a 18 Methodist college in Kansas. 19 I then taught journalism at Central 20 Missouri State University at Warrensburg before 21 eventually transferring back to U of O for seven more 22 years. 23 Q. You live in Ozark now? 24 A. I do. 25 Q. When did you move back to Ozark?
Page 10 1 please? 2 A. 10-29-33. 3 Q. And how old does that make you? 4 A. Eighty-one. 5 Q. Where were you born? 6 A. Resident of Ozark, but at the time Ozark didn't 7 have a hospital, so I was born in the Fort Smith 8 hospital. 9 Q. Did you grow up in Ozark? 10 A. I grew up in Ozark, yes, until I went away to 11 college. 12 Q. Graduate high school from Ozark? 13 A. Yes. 14 Q. What year? 15 A. Fifty-one. 16 Q. And you said you went to college. Was it 17 immediately after high school? 18 A. Yes. 19 Q. Where did you go to college? 20 A. I got my bachelor's degree in sociology and 21 political science at the University of the Ozarks, 22 and my master's in journalism and social welfare at 23 Florida State University. 24 Q. Where was University of the Ozarks located? 25 A. Clarksville.	Page 12 1 A. Seventy-seven. 2 Q. And immediately before you moved back to Ozark 3 where did you live? 4 A. For a, after leaving University of the Ozarks 5 in '76 I spent a year working under a grant at 6 Western Arkansas Planning and Development District in 7 Fort Smith, and I lived in Fort Smith. 8 Q. Have you lived in Ozark continuously since 9 1977? 10 A. Yes. 11 Q. After you moved back to Ozark where did you 12 work from 1977? 13 A. Where did I work, '77 through '90 at The 14 Spectator, the local newspaper. 15 Q. And what was your position there? 16 A. News and editorial page director, yeah, 17 director. 18 Q. How about after 1980? 19 A. After 1980? 20 Q. Well, I'm sorry. I thought you said The 21 Spectator from '77 to '80. 22 A. No, to '90. 23 Q. My apologies. After 1990 what did you do? 24 A. Mayor of Ozark. 25 Q. For how long?

3 (Pages 9 to 12)

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1 A. First -- well, first '91 through '98, eight 2 years. And then I did not run again. And then in 3 2006 a lot of people asked me to run again. I did 4 and was elected and served 2007 through 2010, another 5 four years. 6 Q. Let me write that down. I'm sorry. I didn't 7 get that. The first term as mayor was? 8 A. '91 through '94. 9 Q. And then? 10 A. '95 through '98, and then 2007 through 2010. 11 Q. At any time did you also serve on the Ozark 12 city council? 13 A. Yes. I don't remember the exact dates, but in 14 the eighties I served a total of six years on the 15 Ozark city council. 16 Q. Sometime during the 1980's a total of six 17 years? 18 A. Yes, uh-huh. 19 Q. Other than that period of time, did you serve 20 on the city council at other times? 21 A. No. Well, I have to think for a moment. I was 22 thinking all of that was in the eighties, but, yes, I 23 would say four of that, yes. Four of that was in the 24 eighties, and there were two other years. 25 It had to be in the nineties. No, let me	1 Q. Did your parents live in Ozark? 2 A. Yes. 3 Q. So you grew up in Ozark after. I guess, you 4 were born until you were 18? 5 A. Almost 18. I went to -- I actually entered 6 college shortly before my 18th birthday. 7 Q. And what were those first years that you lived 8 in Ozark with your parents? 9 A. Well, actually, my dad died when I was nine 10 years old, killed in an electrical accident, and my 11 mother died when I was three and a half, so my 12 stepmother raised my sister and I. 13 Q. Okay. And I misspoke. Basically from birth 14 until almost 18 you lived in Ozark? 15 A. Correct. 16 Q. And those years were? 17 A. Oh, '33 through, until sometime in '51, until 18 the fall of '51. 19 Q. I believe the McClellan-Kerr navigation project 20 occurred in the 1970s; is that right? 21 A. 1960s. 22 Q. Okay. And that's where they would have brought 23 the Ozark pool up -- 24 A. Uh-huh. 25 Q. -- and inundated --
Page 14	Page 16
1 think, let me think. I was the mayor through '98. I 2 was appointed is the reason I'm hesitating there, two 3 of those years. 4 To be exact, one year and eleven months I 5 was appointed to finish the term of a person who, I 6 don't remember whether they left the city or resigned 7 or moved to another ward or something like that. 8 And that was in not in the eighties, so I 9 was wrong there. I want to say that that was 10 probably early 2000. I don't remember the exact 11 date. 12 Q. That's fine. Where do you live now? 13 A. 311 Protheroe Drive. 14 Q. 311? 15 A. Protheroe Drive. 16 Q. And where is Protheroe Drive in relation to, 17 let's say downtown and the -- 18 A. Okay. Third Street, which is Exit 37 from the 19 interstate that brings you to downtown. It's off of 20 Third Street to the west. 21 Q. You said you were born in Fort Smith but 22 basically grew up in Ozark? 23 A. Oh, yeah. I was born in the Fort Smith 24 hospital, because Ozark at the time did not have a 25 hospital. Shortly thereafter it did.	1 A. Uh-huh. 2 Q. -- quite a bit of land on the north side of the 3 river? 4 A. Yes, yes. 5 Q. But while you were growing up and in high 6 school the McClellan-Kerr project had not yet taken 7 place? 8 A. That's correct. 9 Q. Are you familiar with a road approximately 100 10 to 200 yards east of the depot back during the time 11 that you were growing up that crossed the railroad 12 tracks? 13 A. I am. 14 Q. And did that road during the period of time 15 that you were growing up have any street sign on it? 16 A. No, not to my knowledge. 17 Q. What did you call that road when you were 18 growing up? 19 A. Actually, I didn't call it anything. I have 20 never heard of it actually called something until a 21 few years ago. 22 Q. If you were going to tell somebody I'm down 23 that road or go down that road, how would you 24 describe it? 25 A. Okay. It was farmer roadway, crossway to the

Page 17 1 dump, city dump until actually Environmental 2 Protection, et cetera, et cetera, made the city move 3 the dump later. 4 And there was an old -- and I think this 5 would help in answering your question. When you 6 crossed the tracks there to get to the dump there was 7 a huge, absolutely huge mud puddle that stayed there 8 entirely every year in all seasons, dry or wet. 9 That mud puddle, to my knowledge, was never 10 touched by anybody, but I can remember going over 11 that mud puddle going to get to the city dump. 12 Q. Was that road dirt, gravel? 13 A. Yes. 14 Q. What was -- the part of the road that went 15 across the railroad tracks, what was it made out of, 16 if you can recall? 17 A. Mostly red clay, dirt. I think that's one 18 reason that mud puddle stayed there so long. 19 Q. On the south side of the tracks from 1933 to 20 1951 were some houses located over there? 21 A. Yes. 22 Q. Any businesses down there? 23 A. Later, not then, but there was a lumber company 24 down there later. 25 Q. Do you remember about how many houses were down	Page 19 1 lot of it, as I understand, did go into the water. 2 Q. So to go to the dump back in those days you 3 would go south across the tracks? 4 A. Uh-huh. 5 Q. And would you continue going south? 6 A. Yes, to the best of my recollection. 7 Q. Okay. Was that crossing wide enough going 8 across the railroad tracks for one vehicle or two? 9 A. One. 10 Q. And you left the state in 1951 to go to 11 college? 12 A. I didn't leave the state. 13 Q. That's right. 14 A. I left the city. 15 Q. That's right. I apologize. You left the 16 city -- 17 A. Yes. 18 Q. -- and college of the Ozarks, you said it was 19 in Clarksville? 20 A. Yes, sir. 21 Q. Did you live over in Clarksville? 22 A. Yes. 23 Q. But I take it you would come back? 24 A. Oh, yeah, quite often on weekends, yes, because 25 my stepmother and sister still lived here.
Page 18 1 that road? 2 A. Approximately four very -- I think you and I 3 would both would refer to them as shacks. Roughly 4 four, and there could have been more, but to my 5 memory it was about four, very small houses. 6 Q. Did you, yourself, have occasion to go down 7 that road? 8 A. I did. A lot of kids back in those days before 9 the, shall we say, railroad rules were as restrictive 10 as they are now, played along it, well, on the -- not 11 necessarily on the tracks but along the tracks. 12 And, like you say, for a long time the 13 water level there was much lower than it is now. It 14 was prior to the lock and dam thing in there, so yes. 15 Q. And I guess you said there was a dump down 16 there? 17 A. There was. 18 Q. At the end of the road? 19 A. Well, I wouldn't call it the end of the road 20 because you go south across the tracks, and if you go 21 very far, you know, you get in the water. 22 So the dump, you did have to go across the 23 tracks there and across that huge mud puddle to get 24 to the dump, but the dump wasn't like, as I recall, 25 east and west. It was closer to the water because a	Page 20 1 Q. Did you continue during that time that you were 2 in college to use that road and the crossing going 3 over the road? 4 A. No, no. No, I had no reason to. By the time I 5 go to college I didn't care a thing about playing 6 along the railroad tracks. 7 Q. Understood. And you said it was approximately 8 the 1960s that the Ozark pool was flooded for the -- 9 A. I don't know the exact flooding time. I 10 remember the lock and dam was completed in the mid to 11 late '60s. And I don't know, or I don't remember the 12 time the water level was. 13 Q. But sometime after the lock and dam was 14 completed -- 15 A. Sure. 16 Q. -- the water level was brought up? 17 A. Yes. 18 Q. And I believe the Army Corps of Engineers 19 condemned the land that those houses and maybe the 20 lumber company was sitting on? 21 A. Yes. 22 Q. And do you know if they bulldozed that before 23 the water came up, or did they just let the water 24 come up and let those go underwater? 25 A. I don't recall.

5 (Pages 17 to 20)

Page 21 1 Q. Whichever one it was, though, after the Ozark 2 pool was brought up those structures were no longer 3 there? 4 A. That's correct. 5 Q. And I think you said the dump went underwater, 6 too? 7 A. Yes. It went underwater -- well, a lot of it 8 was removed before, but what wasn't removed went 9 underwater. 10 Q. After the Ozark pool came up if someone were 11 walking or driving on that road that went across the 12 tracks, did the road stop immediately after you got 13 past the tracks, or did it go to the east or west? 14 A. Well, it went on, it went on to the dump, and 15 yes, there was a roadway east and west, again, before 16 the water level was raised. Yes. 17 Q. I'm asking after the water level was raised? 18 A. Oh, after the water level. I really don't 19 remember how it looked after the water level, but I 20 have reason to believe that most of that roadway, not 21 necessarily all of it, but most of it was underwater 22 after that, but as far as me having an exact 23 recollection on that, I don't. 24 Q. It's my understanding that in the 1990s there 25 was a propane company that had some tanks?	Page 23 1 did the road lead anywhere except to those propane 2 tanks on the south side of the tracks? 3 A. Of course I told you, the road ran east and 4 west, and how much of it was underwater after they 5 raised the water level, I really don't recall. Not 6 all of it was, but a lot of it was. 7 Q. Do you know if there was any public use for 8 that road after the water was raised up? 9 A. Not to my knowledge. For this reason, those 10 few houses were gone and the lumber company was gone. 11 Q. Okay. Now, you said that the road really had 12 no name while you were growing up? 13 A. Well, I can't say that it didn't have a name, 14 but if it did I never heard it. 15 Q. I appreciate that correction. In the past few 16 years have you heard it referred to as Oliver Street? 17 A. I have the last few years, yes. 18 Q. When did you first hear it referred to as 19 Oliver Street? 20 A. The exact year I do not recall, but primarily 21 when Sandy Key was trying to get the grants for the 22 riverfront development. 23 Q. Do you know approximately when that might have 24 been when -- 25 A. Well, I can give you a range. She has worked
Page 22 1 A. Definitely. 2 Q. Just south of the tracks? 3 A. Definitely. 4 Q. On Union Pacific land? 5 A. Yes. I'm assuming it was on Union Pacific 6 land. 7 Q. Such that the propane company could drive over 8 the crossing and go to their tanks and then drive 9 back across? 10 A. Yes, positively, yes. 11 Q. Did other people drive across that crossing 12 after the -- 13 A. I'm sure they did. 14 Q. After the pool was raised? 15 A. I'm sure they did. Probably not as many, but 16 I'm sure they did, yes. 17 Q. Do you recall seeing that happen, or do you 18 think just an assumption? 19 A. I think at some time I probably saw it 20 happening, but as I say, after I went to college I 21 didn't on a regular basis go down there and check 22 traffic. 23 Q. Understood. After the Ozark pool was raised 24 and the land flowed on the south side of the river, 25 and even -- well, excuse me, afterwards, would that,	Page 24 1 on that off and on for at least ten years. 2 Q. Is River Street the street that runs east and 3 west in front of the post office? 4 A. Yes. 5 Q. Is there a street called Water Street? 6 A. Waters? 7 Q. Water? 8 A. Not to my knowledge. 9 Q. Okay. Were you involved, Mr. McDaniel, in any 10 attempts to have Union Pacific reinstall the crossing 11 at what the Plaintiff City of Ozark calls Oliver 12 Street? 13 A. I was not directly involved. At the time all 14 of that happened Todd Timmerman was mayor. Several 15 years, though, after that Sandy did ask me, and I do 16 recall signing a letter that I think went to Union 17 Pacific officials in regard to the request for them 18 to return the crossing. 19 Q. You make a good point. Let's go back. Do you 20 know the circumstances under which that crossing was 21 removed? 22 A. I do not. I have heard various stories, but as 23 far as having firsthand knowledge, no. 24 Q. It's -- tell me what you've heard, even though 25 it might not be firsthand knowledge.

6 (Pages 21 to 24)

Page 25 1 A. It's not firsthand knowledge. Well, I've heard 2 that Timmerman decided on his own without acquisition 3 of the city council to remove, to not ask that that 4 crossing be retained, and... 5 Q. And that was while he was mayor? 6 A. That's while he was mayor, but at least I have 7 been told that no records have been found that he 8 ever brought the matter before the city council. 9 Q. Is it your understanding or have you heard that 10 then Mayor Timmerman asked Union Pacific to remove 11 the crossing? 12 A. To remove the crossing? 13 Q. Yes, sir. 14 A. Yes. 15 Q. And do you know if Union Pacific acted upon his 16 request and did remove the crossing? 17 A. Yes. 18 Q. When the crossing was removed did you -- when 19 did you first notice that it was removed? It's my 20 understanding it was pulled out in the year 2001, if 21 that helps you. 22 A. That's my understanding of when it was pulled 23 out, too. I can't tell you the date I first noticed, 24 because I don't recall, but I think you're right on 25 the date it was pulled out.	Page 27 1 been removed? 2 A. Occasionally, yes. I mean, not very often for 3 this reason, she knew I had nothing to do with it, 4 and she knew there was very little, if anything, that 5 I could do about it. 6 So I'm not saying that that happened often, 7 but, I mean, I have been in meetings where she 8 brought that up about it and how she wished the mayor 9 at that time had not done that and so forth and so 10 on. 11 Q. Since the crossing was removed until 2001 these 12 conversations that you had with Ms. Key could not 13 have been during your first term or second term as 14 mayor from '91 to '98? 15 A. That's correct. 16 Q. The third time you served as mayor was 2007 to 17 2010? 18 A. Through 2010, yes. 19 Q. Who was the mayor that immediately preceded 20 you? 21 A. C.L. "Bat" Coley. 22 Q. Bat, B-a-t, is his nickname? 23 A. Yes. 24 Q. And the mayor that preceded Mayor Coley? 25 A. Todd Timmerman.
Page 26 1 Q. When you first saw that the crossing was 2 removed did you think anything about it one way or 3 the other? 4 A. No. 5 Q. When did you first learn that there was some 6 dispute about the crossing having been removed? 7 A. Several years after that when Sandy Key talked 8 to me and many others around town, and she just could 9 not believe it happened, could not believe that the 10 mayor allegedly did it on his own without council 11 acquisition. 12 Q. And I take it that she was upset and wanted the 13 crossing put back in because of this plan to have a 14 riverfront development and a dock and things of that 15 nature? 16 A. That is my understanding, also. 17 Q. And folks couldn't get across the railroad 18 tracks because the crossing wasn't there? 19 A. Right. 20 Q. And for them to go from the town side to the 21 river where the development was planned they needed a 22 crossing? 23 A. Yes. 24 Q. Was it while you were mayor that Sandy Key came 25 to you and made complaints about the crossing having	Page 28 1 Q. Were you involved in any attempts to have the 2 crossing reinstalled during your third term as mayor 3 from 2007 to 2010? 4 A. Not directly. As I told you, I think I signed 5 one letter, Sandy Key, that went to the railroad 6 asking -- I don't remember exactly what the letter 7 said, but it had to do with removal of the crossing. 8 Q. And reinstallation? 9 A. Yes. 10 Q. Did you have any conversations. Mr. McDaniel, 11 with anything with the railroad about -- strike that. 12 I take it that you didn't have any conversations with 13 anyone on the railroad about removal of the crossing? 14 A. No, I did not. 15 Q. How about any conversations with the railroad 16 about trying to get the crossing reinstalled. did you 17 talk with anyone? 18 A. No, I did not. 19 Q. Okay. 20 A. Most of that, see, well, for obvious reasons, 21 it was removed during the Timmerman administration, 22 and he asked for the removal. 23 I had -- I wasn't even mayor at the time, 24 so I stayed out of it as much as possible, but in 25 answering your question, no.

7 (Pages 25 to 28)

Page 29	Page 31
1 Q. And you said you have not talked with anybody 2 about getting the crossing reinstalled or anything 3 like that? 4 A. No. I have been in meetings where it came up, 5 but, no, I have not directly talked to them. I mean, 6 I have heard it discussed in meetings certainly. 7 Q. And you were not on the city council when Mayor 8 Timmerman asked -- 9 A. No. 10 Q. -- that the crossing be removed? 11 A. No. 12 Q. Were you involved in the railroad's sale or 13 donation of the train depot to the city? 14 A. I was mayor at the time, yes. 15 Q. Which time? Would that have been the 2007 to 16 2010? 17 A. It -- do you have the year that the museum was 18 donated? 19 Q. No, sir. That's what I am trying to get at. 20 A. I am trying to think myself. No, no, no, 21 because it would -- no, no, it was donated in the 22 nineties. 23 I think I was mayor at the time, but it was 24 in the nineties because I remember James Hugh Gilmer, 25 the former Main Street director, helped get that.	1 Q. At the time the crossing was taken out in 2001, 2 do you know if anybody used it at that time? 3 A. When it was taken out? 4 Q. In 2001? 5 A. No, I do not. 6 Q. Mr. McDaniel, have you ever served on Main 7 Street Ozark? 8 A. No. Unofficially as mayor I have attended 9 meetings, and the mayor is automatically an ex 10 officio member of the Chamber of Commerce, which is 11 not directly affiliated with Main Street but works 12 very closely with Main Street. 13 MR. TUCKER: Let me mark as Exhibit 14 Number 86, Mr. McDaniel, a document 15 entitled project application. 16 (Exhibit No. 86 was marked.) 17 BY MR. TUCKER: 18 Q. I believe it's got your signature at the 19 bottom, and it's dated August 24, 2010. Do you see 20 that, sir? 21 A. Yes, I do recognize my signature. 22 Q. Okay. Tell me what that is. It looks like 23 it's an application for a grant, but I'll let you 24 tell me. 25 A. Then let me look at it first. (Witness reviews
Page 30	Page 32
1 So, yes, I was mayor, but Main Street 2 promoted that much more so than the city directly. I 3 did -- I'm sure I attended meetings on it, might even 4 have written a letter or so, but it was in the late 5 nineties, and, yes, I was mayor. 6 Q. Did the railroad donate the depot, or did it 7 sell it to Ozark? 8 A. Donated it. 9 Q. And then the land under it? 10 A. To the best of my knowledge, yes, I think the 11 usual one dollar legal consideration, but yes. 12 Q. And then I guess shortly thereafter it was 13 turned into a museum? 14 A. It was, yes. 15 Q. And that museum still exists today? 16 A. It does, yes. And it's -- I was on the city's 17 advertising promotion commission. 18 Q. Do you know anything about a letter that Todd 19 Timmerman supposedly had from the railroad saying, 20 okay, we are going to take the grade crossing out? 21 A. No. I don't. The reason I hesitated -- I 22 don't know anything about the letter. I can't say 23 that I haven't been in a meeting where it might have 24 been mentioned, but I didn't mention it because I 25 didn't know about it.	1 document.) This was one of the letters that Sandy 2 Key asked me to sign. I'm looking for a date on 3 there. 4 Q. Do you see the date in the lower right-hand 5 corner? 6 A. Oh yeah, okay. 7 Q. 2-14? 8 A. 2-14, yeah, that was my last year as mayor, 9 yes. Certainly I signed the letter, and I vaguely 10 remember her asking me to. 11 Q. Was that an application for a grant to help 12 develop the riverfront project? 13 A. To the best of my memory, yes. 14 Q. And I believe Ms. Key, who was deposed 15 yesterday, said that a grant was approved in the 16 amount of \$200,000. Do you recall that being right? 17 A. I do, uh-huh. 18 Q. And who was it that the grant came from or the 19 money came from? 20 A. According to Sandy it came, it came from the 21 state, or at least through the state. I can't say 22 that there were no federal funds involved, but it 23 came through the state at least. 24 In all probability I would think maybe the 25 funds themselves would come from the federal

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1 government as administered by the state, but that's 2 an assumption on my part. 3 Q. Okay. You said that C.L. "Bat" Coley preceded 4 you -- 5 A. Yes. 6 Q. -- as mayor before your third term? 7 A. Yes, uh-huh. 8 Q. We've looked at a letter that he wrote to Joe 9 Craig of the Corps of Engineers dated August 25th, 10 2005. That's Exhibit Number 82. 11 A. Uh-huh. Okay. 12 Q. Do you see that first bullet point, the first 13 or second? I don't have a copy of it. 14 A. Due to safety concerns, yes, I do. 15 Q. Can you read that bullet? 16 A. Due to safety concerns posed by Union Pacific 17 Railroad tracks on the north shore of the river, the 18 southern shore is a more suitable location for the 19 marina. 20 Q. Was there some consideration at that time of 21 trying to put a marina on the north shore of the 22 river? 23 A. Yes, there was. 24 Q. Right by the tracks? 25 A. As a matter of fact, that's where Sandy Key and	1 Q. I was just trying to look at his letter and 2 say -- it says, Due to safety concerns posed by the 3 Union Pacific Railroad tracks on the north shore of 4 the river. 5 A. To me, that means that the Union Pacific 6 Railroad had concerns about safety crossing their 7 tracks to a recreational project on the edge of the 8 river. 9 Q. Well, it looks like Mr. Coley said he had 10 safety concerns about the Union Pacific tracks? 11 A. Let me take a look and see what he said. 12 (Witness reviews document.) Yes, it does. 13 Q. Would you agree that there were safety concerns 14 with having a marina right next to the railroad 15 tracks on the north side? 16 A. Yes, I would. 17 Q. And what would some of those safety concerns 18 be? 19 A. Well, you're going to have young people, even 20 more specifically than that, children, going back and 21 forth, back and forth. And as I think we all know, 22 they are not always looking for traffic and other 23 things, as such. 24 And I can only -- I can't speak for late 25 Mayor Coley, but I imagine maybe that entered into
Page 34	Page 36
1 her board wanted it, and, obviously, because it would 2 benefit the city more on the north side of the river. 3 And I do recall quite a bit about that. 4 The Corps of Engineers, of course, was considering 5 it. And I remember talking to the Corps myself, and 6 they explained to me that anybody could apply for a 7 permit for the marina on the north side of the river, 8 and they couldn't stop them, but that they were not 9 likely to get it because the current was too swift 10 for such on the north side of the river. 11 And I'm sure you're aware -- well, we don't 12 have a marina yet, although we are trying to get one 13 on the south side of the river. 14 Q. And it looks like Mayor Coley said. Due to 15 safety concerns -- 16 A. Yes. Yes, he did. 17 Q. What did you say, Posed by the Union Pacific 18 tracks -- 19 A. Posed by the Union Pacific Railroad tracks on 20 the north shore of the river, the southern shore is a 21 more suitable location for the marina. 22 Q. What would some of those safety concerns be 23 with the marina on the north side posed by the Union 24 Pacific tracks? 25 A. Well, the main -- you said safety concerns?	1 his statement there. 2 Q. And those would be safety concerns of yours -- 3 A. Yes, yes. 4 Q. -- if the marina were on the north side right 5 next to the tracks? 6 A. They would be among my concerns, but the fact 7 that the current is too swift also would enter into 8 it. 9 Q. Have you ever worked for a railroad before -- 10 A. I have not. 11 Q. -- or have any railroad experience? 12 A. No. 13 Q. But do you understand that a train traveling on 14 even straight tracks, if the engineer has to apply 15 the train's emergency brakes, there exists a risk for 16 derailling the train? 17 A. Certainly. 18 Q. Do you understand that that risk for derailment 19 increases if the engineer has to apply the train's 20 emergency brakes when the train is in a curve? 21 A. Of course. 22 Q. And there is a broad sweeping curve coming from 23 the east into downtown Ozark on the tracks? 24 A. Yes, sir. 25 Q. If, if the crossing were to go in where the

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Page 37 1 City of Ozark wants it, there would be pedestrians 2 walking back and forth over that crossing? 3 A. In all likelihood that is true. 4 Q. Otherwise there is no need for it? 5 A. Right. 6 Q. And if a Union Pacific train were coming around 7 the curve from the east and looked like it possibly 8 was going to strike a pedestrian, you would want the 9 engineer to take whatever evasive action he could to 10 try to avoid the accident? 11 A. Certainly. 12 Q. Which would include application of the train's 13 emergency brakes? 14 A. Yes. 15 Q. Which, as we said, would increase the risk of a 16 train derailment? 17 A. Yes. 18 Q. And do you understand some of the hazardous 19 chemicals that are transported on these tracks 20 through Ozark on a daily and weekly basis? 21 A. I do. 22 Q. If a train derailed in the location of the 23 proposed crossing or east of it, some of the tank 24 cars could be breached and cause severe environmental 25 damage; is that fair to say?	Page 39 1 A. Sure. 2 Q. -- let me go ahead and go through these. 3 A. Certainly. 4 Q. Are you aware of any written documentation 5 showing that Oliver Street was ever dedicated as a 6 city street? 7 A. No. 8 Q. Are you aware of any written documentation that 9 shows that a crossing at that location was ever 10 dedicated as a city crossing? 11 A. Not aware of it, no. 12 Q. Are you aware of any written documentation that 13 shows that any crossing in the City of Ozark was ever 14 dedicated as a city crossing? 15 A. No. 16 Q. Are you aware of any recorded plat purporting 17 to dedicate Oliver Street for public use? 18 A. No. 19 Q. Are you aware of any recorded plat purporting 20 to dedicate an Oliver Street crossing for public use? 21 A. No. 22 Q. Are you aware of any ordinance accepting a 23 reported plat dedicating Oliver Street to a public 24 use? 25 A. No. I understand the search has been made for
Page 38 1 A. It's fair to say. 2 Q. Regardless of whether the car wound up on the 3 north side of the tracks on the ground or if it went 4 into the Arkansas River? 5 A. Yes. 6 Q. If there was a derailment at the crossing 7 location that is sought there is a potential for 8 injury or loss of life there at that crossing? 9 A. Certainly. 10 Q. And there's also the potential for injury to 11 the railroad employees on the train? 12 A. Yes. 13 Q. Do you know if there has been any study or 14 analysis done if the crossing is reinstalled how many 15 people would be using that crossing in a day? 16 A. No, not how many people will be using that 17 crossing. The only study that I recall is that 18 the -- I think the economic development chairman at 19 the Chamber of Commerce did get some statistics 20 several years ago from the University of Arkansas 21 about potentially how many more jobs, et cetera, et 22 cetera, but in regard to the crossing, no, I do not. 23 Q. Mr. McDaniel, I don't think you have 24 information with respect to the questions I'm getting 25 ready to ask you, but just for the record --	Page 40 1 such but none found. 2 Q. Are you aware of any ordinance accepting or a 3 recorded plat dedicating an Oliver Street crossing to 4 a public use? 5 A. No. 6 Q. Are you aware of any ordinance by the city 7 establishing a right-of-way for Oliver Street? 8 A. No. 9 Q. Are you aware of any ordinance by the city 10 establishing a right-of-way for an Oliver Street 11 crossing? 12 A. No. 13 Q. I take it there's no record you're aware of of 14 the city condemning Oliver Street for a public use? 15 A. No. 16 Q. The city has never initiated condemnation 17 proceedings for the purpose of establishing a 18 right-of-way for an Oliver Street crossing, to your 19 knowledge? 20 A. Not to my knowledge. 21 Q. There is no recorded easement or other 22 instrument granting the city the right to cross Union 23 Pacific's right-of-way? 24 A. Not to my knowledge. 25 Q. Do you know of any city funds that were ever

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1 used for the purpose of maintaining what the city now 2 calls Oliver Street? 3 A. No. 4 Q. And you did three separate terms as mayor? 5 A. Correct. 6 Q. You never had your street, city street 7 workers -- 8 A. No. 9 Q. -- work on that street -- 10 A. No. 11 Q. -- which Ozark now calls Oliver Street? 12 A. No. 13 Q. Do you know who constructed what the city calls 14 Oliver Street? 15 A. No. 16 Q. And I don't know that a street was ever 17 constructed, I mean, sometimes -- 18 A. Uh-huh. 19 Q. -- just by usage -- 20 A. Right. 21 Q. -- something will turn into a dirt road? 22 A. Correct. 23 Q. Okay. And that road, I take it, didn't have 24 curbs on the side? 25 A. Definitely not.	1 Q. It's not uncommon to see equipment stored on 2 the siding track? 3 A. No, it's not. 4 Q. Or trains stored there? 5 A. No. 6 Q. Mr. McDaniel, were you involved in any way in 7 preparation of the Complaint in this case, and that 8 is the legal document? 9 A. I understand what it is. No. 10 Q. Have you read the Complaint? 11 A. Yes. 12 Q. Do you know what is being asked for in the 13 Complaint? 14 A. A rudimentary knowledge, yes. 15 Q. To reinstall the crossing? 16 A. Yes. 17 Q. Do you understand, Mr. McDaniel, that the city 18 has applied for a second grant through, I think 19 Ms. Sneath said the Arkansas River Commission? If 20 that's not it, it's close. She said it was ARC. Are 21 you familiar with that? 22 A. Vaguely. She did say some time ago that she 23 was applying for another grant. I do not know the 24 details of it, but, yes, she did say she was applying 25 for another grant.
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1 Q. Or gutters? 2 A. No. 3 Q. Okay. 4 A. Or pavement. 5 Q. Or pavement. Did it -- okay. Do you know who 6 constructed the crossing that went over the tracks? 7 A. No, I don't. 8 Q. And you said it was pretty much just packed red 9 clay? 10 A. I said the big mud puddle on the south side of 11 the tracks was primarily red clay. 12 Q. Throughout the years have you seen railroad 13 employees working at the location east of the depot 14 where the crossing is requested to go back? 15 A. I have seen -- I haven't paid close attention, 16 but, yes, I have seen workers on the track, yes. 17 Q. Okay. And it's not uncommon to see trains 18 going through the location where the City of Ozark 19 wants the crossing? 20 A. No, it's not. 21 Q. As a matter of fact, those trains go through 22 that area every week? 23 A. Yes. 24 Q. Probably every day? 25 A. Every day.	1 Q. I take it you weren't involved in that 2 application process? 3 A. No. Because, see, I haven't been mayor now in 4 a little over four years. I think it was since then 5 that she applied for that. 6 I've heard her speak about it since then at 7 various meetings, but I was -- to the best of my 8 memory, I was not mayor at the time when she applied 9 for it. I think it was some time after. 10 Q. Okay. Mr. McDaniel, have you understood the 11 questions that I've asked you here today? 12 A. I have. You have done a good job. 13 Q. Have I given you a fair and a full opportunity 14 to answer those questions? 15 A. You certainly have. 16 Q. Is there anything you would like to add before 17 I stop my part of the deposition? 18 A. No. 19 Q. All right. Thank you, Mr. McDaniel. 20 A. You're entirely welcome. 21 MR. BROCKETT: No questions. 22 (The deposition was concluded at 1:48 p.m.) 23 24 25

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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(e) 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 12th day of February, 2015.

25 _____
JANESE FERGUSON SMITH, CCR, RPR
Notary Public for Saline County
and Court Reporter.

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Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Sandra Key

Date: February 11, 2015

Case: City of Ozark v. Union Pacific Railroad Company

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS VIDEOTAPED DEPOSITION OF SANDRA KEY February 11, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	INDEX EXAMINATION By Mr. Tucker 7 EXHIBITS (Exhibits 1-23 were marked in McNutt depo) Exhibit No. 24 (Key Notice) 10 Exhibit No. 25 (Garver Plat) 12 Exhibit No. 26 (Plat) 14 Exhibit No. 27 (WAPDD Map) 15 Exhibit No. 28 was marked and withdrawn - 17:34 Exhibit No. 29 (Concepts for Trail) 27 Exhibit No. 30 (Depot Planning Only Map) 29 Exhibit No. 31 (Proposed Paths Map 2) 30 Exhibit No. 32 (Proposed Paths Map 3) 31 Exhibit No. 33 (Proposed Paths Map 4) 32 Exhibit No. 34 (Burruss Site Plan) 34 Exhibit No. 35 (11-29-10 Letter) 40 Exhibit No. 36 (Burruss Plat) 41 Exhibit No. 37 (Proposed Pedestrian - Garver) 42 Exhibit No. 38 (1-15-14 Email) 44 Exhibit No. 39 (Crossing Status) 46 Exhibit No. 40 (Businesses Using Oliver) 47 Exhibit No. 41 (UP Switches) 48 Exhibit No. 42 (5-11-12 Email) 49 Exhibit No. 43 (4-29-13 Email) 49 Exhibit No. 44 (4-18-13) 49 Exhibit No. 45 (MSO Response) 50 Exhibit No. 46 (3-29-13 Email) 50 Exhibit No. 47 (3-15-13 Agenda) 51 Exhibit No. 48 (3-14-13 Letter) 51 Exhibit No. 49 (2-11-13 Letter) 52 Exhibit No. 50 (11-19-12 Opinion) 52
Page 2 APPEARANCES ON BEHALF OF THE PLAINTIFF: CHRISTOPHER D. BROCKETT, ESQ. Sayre & Brockett 401 West Commercial Street Ozark, Arkansas 72949 ON BEHALF OF THE DEFENDANTS: SCOTT H. TUCKER, ESQ. Friday, Eldredge & Clark 400 West Capitol Suite 2000 Little Rock, Arkansas 72201 also present: Bob Dunn	Page 4 EXHIBITS (Continued) Exhibit No. 51 (11-30-12 Letter and Exhibits) 53 Exhibit No. 52 (11-13-12 Letter) 53 Exhibit No. 53 (5-9-12 Letter) 54 Exhibit No. 54 (5-2-12 Email) 55 Exhibit No. 55 (June 2011 Meeting Notes) 55 Exhibit No. 56 (6-30-11 Letter) 57 Exhibit No. 57 (7-18-11 Letter) 57 Exhibit No. 58 (9-1-10 Meeting Sign-In) 58 Exhibit No. 59 (Purpose of Meeting) 59 Exhibit No. 60 (9-25-09 Email) 62 Exhibit No. 61 (8-20-09 Letter) 63 Exhibit No. 62 (10-1-09 Letter) 64 Exhibit No. 63 (12-10-08 Notes) 65 Exhibit No. 64 (12-1-08 Letter) 66 Exhibit No. 65 (1-31-08 Email) 67 Exhibit No. 66 (12-14-04 Letter) 68 Exhibit No. 67 (12-14-04 Letter) 70 Exhibit No. 68 (Pipe Encasement Diagram) 71 Exhibit No. 69 (City Water Lines) 71 Exhibit No. 70 (Photographs) 93 Exhibit No. 71 (Photographs) 93 Exhibit No. 72 (Press Release) 136

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1 ANSWERS AND DEPOSITION OF SANDRA KEY, a 2 witness produced at the request of the Defendants, 3 was taken in the above-styled and numbered cause on 4 the 11th day of February, 2015, before Janess 5 Ferguson Smith, Certified Court Reporter and Notary 6 Public in and for Saline County, Arkansas, at the 7 Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas, at 2:15 p.m. 9 10 ***** 11 12 STIPULATIONS 13 It is stipulated and agreed by and between 14 the parties through their respective counsel that the 15 deposition of SANDRA KEY may be taken for any and all 16 purposes according to the Federal Rules of Civil 17 Procedure. 18 ***** 19 20 21 22 23 24 25	1 form of the question. 2 MR. TUCKER: That will be fine. 3 EXAMINATION 4 BY MR. TUCKER: 5 Q. Will you please state your full name, ma'am? 6 A. Sandra Marie Key. 7 Q. Ms. Key, my name is Scott Tucker. I'm an 8 attorney for the Union Pacific Railroad Company in a 9 case styled City of Ozark versus Union Pacific 10 Railroad. 11 I'm here to take your deposition today 12 because Mr. Brockett named you as a possible witness 13 in this case. Do you understand that? 14 A. Yes. 15 Q. Have you ever given a deposition before? 16 A. No. 17 Q. Let me go over some ground rules with you. I'm 18 going to ask you a number of questions, and if you 19 would, please answer out loud rather than with a nod 20 of the head or shake of the head. 21 A. Okay. 22 Q. If you do that, I'm going to ask you if that's 23 a "yes" or a "no." 24 A. Okay. 25 Q. And try to stay away from "uh-huh" and
Page 6	Page 8
1 THE VIDEOGRAPHER: We are on the audio 2 and video record. Today's date is 3 February the 11th, 2015. The approximate 4 time is 2:15 p.m. 5 This is the video recorded deposition 6 of Ms. Sandy Key. This deposition is being 7 taken at 401 West Commercial Street, Ozark, 8 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 for Union 14 Pacific Railroad. 15 THE VIDEOGRAPHER: Would the reporter 16 please swear the witness. 17 SANDRA KEY, 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: Scott, before we begin 23 I want to make the same stipulations, you 24 know agreement by the parties, and then all 25 objections are reserved except as to the	1 "huh-uh," if you would, and if you say one of those, 2 I'll ask you if it's a "yes" or "no," just to clarify 3 what your response is. 4 The court reporter is taking down 5 everything that we say verbatim, and we both can't 6 talk at the same time. 7 Please do your best to let me finish asking 8 the question before you begin your answer. I'll do 9 my best to let you finish answering the question 10 before I ask you another one; okay? 11 A. Yes. 12 Q. You understand you have been placed under oath 13 today to tell the truth and the whole truth? 14 A. Yes. 15 Q. Just as if you would be in a courtroom in front 16 of a judge and a jury? 17 A. Yes. 18 Q. Okay. Ms. Key, let me have an agreement with 19 you, if you don't hear one of my questions, will you 20 please stop and ask me to repeat it? 21 A. Yes. 22 Q. And if you don't understand one of my 23 questions, will you please stop me and ask me to 24 rephrase it? 25 A. Yes.

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Page 9 1 Q. Because we'll be relying upon the answers that 2 you give today in preparation for the trial in this 3 case, and if you answer a question without asking me 4 to repeat it or rephrase it, I'm going to take it 5 that you heard the question and understood the 6 question. Is that fair? 7 A. Yes. 8 Q. All right. Are you on any medications today 9 that would affect your ability to give accurate and 10 truthful answers? 11 A. No, sir. 12 Q. Okay. If at any time you realize you gave an 13 incorrect answer to a previous question, will you 14 please stop me, and let's go back to whatever the 15 question was and whatever the answer should have been 16 and let me know that you gave an incorrect answer, 17 and you want to correct that, at any time during the 18 deposition because we want to make sure that we have 19 as accurate a record as possible. Okay? 20 A. Yes, sir. 21 Q. Do you have any questions about the process 22 before we get going? 23 A. I don't think so. 24 Q. All right. We're going to keep going in 25 numerical order as far as exhibits are concerned, so	Page 11 1 can attach them as exhibits to your deposition? 2 A. Yes. 3 Q. Okay. What's -- why don't we just start with 4 what's on top there, Ms. Key. 5 A. All right. This is a plat that was done by 6 Garver Engineering in North Little Rock, and you can 7 see the lines -- the diagonal lines represent the 8 property that the city has leased from the Corps of 9 Engineers that was done by Bill Ruck. 10 Q. Bill Ruck with Garver Engineering? 11 A. Yes. That's our engineer. 12 Q. Okay. And this is a -- it says 2013 Google 13 photograph. It's an overhead view, and then the, the 14 area that's circled in black with hashmarks, that's 15 the land that the city has leased from the Corps; is 16 that correct? 17 A. That's right. 18 Q. Okay. And I see part of it, Ms. Key, says. 19 Recorded location of asphalt crossing removed by 20 Union Pacific. Is that correct? 21 A. Yes. 22 Q. Okay. And that looks to be directly across the 23 street from what is now the post office? 24 A. Yes. 25 Q. And I see here there's a box that says 100 foot
Page 10 1 I believe we stopped Mayor McNutt's deposition with 2 Exhibit Number 23. 3 I'm going to make the first exhibit to your 4 deposition Exhibit Number 24, which is the Notice of 5 Deposition and ask you if you've seen that document 6 before. 7 (Exhibit No. 24 was marked.) 8 A. Yes, sir, I have it here. 9 Q. Okay. And it directs you to be here today at 10 the law office of Sayre and Brockett, 401 West 11 Commercial in Ozark. 12 A. Yes. 13 Q. There are a number of things on the last two 14 pages that we, pardon me, asked you to bring, and I'm 15 not going to go over all of the different categories 16 in detail, because it looks like you brought a number 17 of different documents with you. Is that right? 18 A. Right. 19 Q. Okay. Why don't we look at the documents that 20 you've, you've brought, and to the extent we need to 21 we'll number them as exhibits. 22 A. Do you want this? 23 Q. Yes, ma'am. We can put that over here. And 24 you can start wherever you think would be a good 25 place to start. You've copied documents so that we	Page 12 1 railroad right-of-way. Do you see that? 2 A. Yes. 3 Q. So do you understand Union Pacific has 50 feet 4 on both sides of the tracks for its right-of-way? 5 A. Yes. 6 (Exhibit No. 25 was marked.) 7 BY MR. TUCKER: 8 Q. Anything else about Exhibit Number 25 that we 9 need to discuss before we move on to the next one? 10 A. Well, if you want to see the narrow area right 11 there, our walking trail is a five foot trail. That 12 area is estimated to be eight to ten feet wide 13 through the most narrow part of our property. 14 Q. Okay. If Union Pacific has 50 feet on both 15 sides of the tracks, isn't it true that at certain 16 locations the railroad's right-of-way actually goes 17 out into the river? 18 A. Yes. 19 Q. Okay. Because -- where would those be, in 20 looking at Exhibit 25? 21 A. Where would your property be? 22 Q. Yes, ma'am. I -- it's my understanding that 23 the railroad has 50 feet on both sides of the tracks, 24 and I've been out there, and it seems like there are 25 certain locations where the river is up to 15 to

3 (Pages 9 to 12)

Page 13	Page 15
1 20 feet from our tracks. 2 A. I wouldn't be able to tell you that. I just 3 know that this is what the engineer drew up that said 4 was outside of your right-of-way. And everything 5 within those hashmarks is outside of your 6 right-of-way. 7 Q. Okay. 8 A. According to the engineer. 9 Q. Okay. Anything else on 25 to discuss? 10 A. No. 11 Q. Okay. And you were looking at the original, 12 and I was looking at the actual copy -- 13 A. Yes. 14 Q. -- that has the exhibit sticker on it? 15 A. Yes. 16 Q. Okay. What do you have next? 17 A. Well, this is just a copy of the map which you 18 have already from 1962 that the city used as their 19 city map. 20 And I just copied the portion out that 21 shows the houses that were down there on Oliver 22 Street, the pallet plant, and the crossing at Oliver 23 Street. 24 Q. You said the pallet plant? 25 A. Uh-huh. Yes, sir. Sorry.	1 Q. Okay. 2 A. That's where I think I got it; okay? I know 3 there is a large map. 4 Q. Okay. I didn't see a date on this, but you 5 said it was -- 6 A. It's '62. 7 Q. All right. Then we have a two-page map. It 8 says, Map prepared by Western Arkansas Planning and 9 Development District, Fort Smith, Arkansas. It's two 10 halves of the same map; is that right? 11 A. Yes. 12 MR. TUCKER: I'll mark that as Exhibit 13 Number 27. 14 (Exhibit No. 27 was marked.) 15 BY MR. TUCKER: 16 Q. And do you know where this came from? 17 A. Western Arkansas -- that original blueprint 18 came from Western Arkansas Planning and Development, 19 but I got it from my predecessor. He gave me most of 20 these maps. 21 Q. And who was that? 22 A. James Gilmer. 23 Q. When you say "predecessor," you mean the former 24 executive director of Main Street Ozark? 25 A. Yes. He left me with some, some maps, and that
Page 14	Page 16
1 Q. That's all right. And 1962, that would be 2 before the Corps of Engineers inundated the Ozark 3 pool? 4 A. Yes. 5 Q. And is it your understanding that once that 6 happened that all of these houses that you have shown 7 here on what I'm going to mark as Exhibit 26 and the 8 pallet plant, they were at that point under water? 9 A. Well, they were purchased by the Corps of 10 Engineers, and then that area, most of that area was 11 flooded. 12 Q. Okay. 13 (Exhibit No. 26 was marked.) 14 BY MR. TUCKER: 15 Q. All right. And who -- where, where did this, 16 does this map come from? 17 A. The city -- Western Arkansas Planning and 18 Development did the map, and there's a, I think a 19 large map at the city hall, I think. 20 I don't -- I think I just took a copy of a 21 portion of the map that the mayor had on her desk, 22 and she'll be here tomorrow, I guess. 23 Q. Are you talking about former mayor Carol 24 Sneath? 25 A. Yes.	1 was one of them. 2 Q. Okay. And this -- 3 A. In fact, that's where I got those, now that I 4 think about it. 5 Q. When you say "those," do you mean Exhibit -- 6 A. That exhibit from 1962. 7 Q. Exhibit 26. 8 A. Okay. 9 Q. All right. And Exhibit Number 27 says Map 10 Prepared, May 1975? 11 A. Yes. 12 Q. Okay. It's two pages. I'm going to paperclip 13 them together. All right. Ms. Key, let's see what 14 else you have there. 15 A. This is the same thing as that, just chunks. 16 You may not want that. It's just the same map. 17 Q. Yeah, this is a copy of the Exhibit 27, so we 18 won't make that a separate exhibit. 19 A. Okay. And you asked for plans for different -- 20 this is a plan that we had for the floating, for a 21 floating platform at one time. 22 Q. Okay. 23 A. And let's see the date. 24 Q. Who drew the plan, do you know? 25 A. Terry Burruss, our architect. I'm trying to

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Page 17 1 see the date on here. Well, I can't see it. 2 Maybe -- there it is. Can you, can you tell what it 3 says? 4 Q. Oh, let's see. 5 A. It's 2010, it looks like. 6 Q. Okay. I can't tell, but I'm going to put an 7 Exhibit 28 sticker on that. 8 (Exhibit No. 28 was marked.) 9 BY MR. TUCKER: 10 Q. You said this was the original plan? 11 A. No, that's one of the plans. It's been changed 12 several times. You asked for all of the plans. 13 Q. Sure. Okay. Do you know if this was the 14 original plan? 15 A. No. The original plan was the, the plan that I 16 showed you. 17 Q. Why don't you hold that up to the camera. 18 A. (Witness complies.) All right. This was the 19 original plan. 20 Q. Okay. And I see -- let's move that bottle of 21 water. It says, Main Street Ozark, Ozark, Arkansas 22 Riverbend Marketplace Schematic; is that correct? 23 A. Yes. 24 Q. And then there's a pier that juts out into the 25 river?	Page 19 1 A. Somewhere around about there, approximately. 2 Q. We won't make that an exhibit for now. 3 A. Okay. 4 Q. Do you have a, in paper form something that 5 shows this that's on the blow-up board, or is that 6 just what you have right here? 7 A. I don't have, I don't have anything with me. I 8 may be able to find something if you want it. 9 Q. Okay. If you can, that would be good, so that 10 we can refer back to it, because I can't make that 11 blow-up board an exhibit. 12 A. Can you take a picture of it? 13 Q. Well, the videographer already has. 14 A. All right. 15 Q. What was -- and I have marked one of the plans 16 Exhibit Number 28, but why don't you show me the next 17 iteration of the plan. 18 We started out with the blow-up board. 19 What, what came next? And it may have been this one, 20 or it may have been something else. 21 A. Now I may not have everything in order here, 22 because we did some things in between. But this was 23 a plan that we had, I guess, in 2012 when we had the 24 flotilla here. That's the day that we presented 25 this, and the Corps was at the flotilla. It was
Page 18 1 A. Yes. 2 Q. There is just behind the pier a pedestrian 3 overpass or a tower; is that correct? 4 A. Yes. 5 Q. Okay. And then, I guess, to, what would be to 6 the right or compass direction to the east, that 7 would be the depot; is that correct? 8 A. Yes. 9 Q. All right. And was this original plan that 10 you're showing us, Ms. Key, was that submitted to the 11 Corps of Engineers? 12 A. It was not formal -- well, yes, it was. It was 13 submitted as -- we were asking for a permit for this, 14 and I, it was like a handwritten thing that I did and 15 submitted it. It wasn't formal at all. 16 Q. And did the Corps of Engineers reject that 17 because of the pier extending out into the river? 18 A. They told us that we couldn't have the pier, 19 and this also has a marina. And they said we 20 couldn't have the marina on the north side of the 21 river, so we had to revise the plan. 22 Q. Okay. That -- and you said that was the 23 original plan. When was it submitted to the Corps? 24 A. Probably 2003. 25 Q. Okay.	Page 20 1 cantilevered. 2 Q. When you say it's cantilevered, what do you 3 mean? 4 A. The dock is, or the boardwalk is cantilevered 5 out over the water rather than floating. 6 Q. I see. Okay. And then there's also -- would 7 that building to the right, would that be the depot? 8 A. Yes. 9 Q. And then to the left, is that the pedestrian 10 overpass? 11 A. Yes. We purchased property over here to build 12 a pedestrian overpass. 13 Q. Do you still own that property? 14 A. Yes. 15 Q. And when do you believe that this plan was 16 submitted to the Corps of Engineers? 17 A. October 2011. 18 Q. And did the Corps approve that plan or -- 19 A. Well, no, it wasn't presented that way. It was 20 just -- they were -- they attended the flotilla, and 21 that's when we presented the plan, and they liked -- 22 Mark Milholland, who was the CEO there in 23 Russellville, liked the plan. He liked the idea of 24 it being cantilevered, but we never presented 25 anything because they weren't allowing us to present

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Page 21 1 until we got our crossing back. 2 Q. Okay. What was the next change to the marina 3 or boat dock plan on the north side of the river? 4 A. Well, we moved the marina to the south side of 5 the river. 6 Q. Okay. 7 A. And we, we're working on trying to get a 8 transient boat dock on this side of the river, which 9 we have a grant that we requested. 10 Q. When you say "this side" you mean the north 11 side? 12 A. Yes. 13 Q. Okay. Now I interrupted you just for clarity 14 on the record. You said we're trying to get a 15 transient boat dock on the -- 16 A. North side. 17 Q. -- north side of the river. And I apologize 18 for interrupting you. Go ahead and tell me what you 19 were going to say. 20 A. Well, we've applied for a grant. We are part 21 of the Arkansas River Connection plan to put ten 22 transient boat docks along the Arkansas River, and 23 Ozark is one of the key locations. 24 Q. When you say "we've applied for a grant," who 25 have you applied to?	Page 23 1 A. Game -- Fish and Wildlife. It's called a BIG P 2 grant through Fish and Wildlife. 3 Q. Arkansas Game and Fish or United States Fish 4 and Wildlife. 5 A. United States Fish and Wildlife. 6 Q. Okay. So tell me how that works. Does the 7 United States Fish and Wildlife award grants to 8 certain organization for what? 9 A. Well, this, actually, was a different 10 situation. Normally it would be an individual 11 applying for the grant, but they wanted to do a big 12 plan and do the entire river, so they applied for 13 several locations. 14 Q. Now when you say "they"? 15 A. They, Arkansas River Connection. 16 Q. Thank you. 17 A. Sorry. 18 Q. That's okay. I just want to make sure when I 19 go back and read it I know what I'm reading. Go 20 ahead, please. 21 A. They've applied for a grant, and we are one of 22 the key locations in their grant. 23 Q. When -- 24 A. We don't know -- 25 Q. When did they apply for this grant; do you
Page 22 1 A. Arkansas River Connection has applied for the 2 grant, and Ozark applied to be one of the recipients 3 of the grant. 4 Q. Okay. Help me out there. You said Arkansas 5 River Connection? 6 A. Uh-huh. 7 Q. Who are they? 8 A. Okay. It's a state-wide coalition that, that 9 was formed years ago with -- the Corps of Engineers 10 has a member on there, Arkansas -- the governor's 11 office, I think the governor's office. We have all 12 of our representatives on it. 13 AEDC has a representative, Parks and 14 Tourism, Steve Owen, who's the president of the 15 Little Rock Yacht Club, Stan Hastings, who is also a 16 yacht club person, member. Wayne Woods is on the 17 board. So there's quite, there's quite a large 18 board. Greg Nabholz actually started the board. 19 Q. And the name of that organization, once again. 20 A. Arkansas River Connection. 21 Q. Okay. 22 A. I'm also on that board. 23 Q. And you said they applied for a grant? 24 A. Yes. 25 Q. Who did they apply for a grant with?	Page 24 1 know? 2 A. Last year. I think it was October or November? 3 Q. October or November -- 4 A. I'm not sure about the date, but it was late 5 last year. 6 Q. October or November of 2014? 7 A. Yes. 8 Q. And if they get their grant, do you have an 9 application in for part of that grant? 10 A. We are a part of the grant already. We've 11 already applied. We're a part of what they asked for 12 the money for. 13 Q. Okay. Tell me about that. 14 A. What do you want to know? 15 Q. Well, did you have to submit plans on here's 16 our plan for the river, and so we want or hope to 17 receive "x" dollars as part of this grant? 18 A. No. We, we were using their plan, which I have 19 a copy of that here. I think I gave it to you. 20 Q. Well, before we get to their plan. I'm -- we 21 are going through the -- and I want to go through in 22 order, as best we can, the different modifications to 23 the, your plan development. 24 And you've shown me two blow-up boards, and 25 then we marked an exhibit to be Number 28, and I

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Page 25

1 don't know what's next.
 2 You'll have to show me the plan that came
 3 after the last one we talked about, which was the
 4 blow-up board you held up before the camera.
 5 **A. Well, I think we're kind of out of order,**
 6 **actually, because the original plan was the walking**
 7 **trails. We started out with the walking trails, and**
 8 **we ended up from there to this. So we kind of**
 9 **skipped that.**
 10 Q. Hold on. Hold on. When you say "this," that's
 11 not going to -- we can't read that in the transcript.
 12 Okay. Let's start over.
 13 **A. All right.**
 14 Q. Let's start over.
 15 **A. We had a walking trail plan first.**
 16 Q. Before any type of --
 17 **A. Before anything.**
 18 Q. Now, hold on. I've got to finish --
 19 **A. I'm sorry.**
 20 Q. -- asking the question.
 21 **A. Sorry.**
 22 Q. That's okay, but the court reporter can't take
 23 down when we both speak at the same time. And I'm
 24 not getting onto you, but, but she'll have a real
 25 hard time.

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1 Let me try to understand this. When you
 2 said. We had a walking trail planned first, would you
 3 mean that Ozark wanted to have a walking trail on the
 4 south side of the tracks, without reference to there
 5 being any development along the river?
 6 **A. Yes.**
 7 Q. Is that what you're saying?
 8 **A. Yes. That's where we started.**
 9 Q. Okay.
 10 **A. And I apologize for skipping ahead.**
 11 Q. Don't worry about that. That -- when, when did
 12 that first take place?
 13 **A. Well, the final plan was submitted in 1997.**
 14 **This was for walking trails on the Arkansas River**
 15 **south of the tracks, and there are several maps in**
 16 **there that will show exactly what we had planned. In**
 17 **fact, I have a stack of those for you.**
 18 Q. And did you submit this to the Corps of
 19 Engineers?
 20 **A. Yes. And as a result they leased all of that**
 21 **property to us on the south side of the tracks.**
 22 Q. When was that lease entered into?
 23 **A. The -- they finalized it in 2001, and we have a**
 24 **copy of it here if you want to put it in as an**
 25 **exhibit.**

Page 27

1 Q. Yes, ma'am, I do.
 2 **A. Here it is. This is a copy of that.**
 3 Q. Okay. Now when you say "this," what you're
 4 talking about is a black and white copy that says
 5 City of Ozark Concepts for Trail Development, Revised
 6 September 1997?
 7 **A. Yes.**
 8 Q. And it's copy of the original booklet?
 9 **A. Yes.**
 10 **(Exhibit No. 29 was marked.)**
 11 BY MR. TUCKER:
 12 Q. Okay. I'm going to put a clip on that.
 13 **A. You may want to look at these as well.**
 14 Q. Are they part of this book?
 15 **A. They are maps that were submitted along with it**
 16 **that show the crossing that we were going to use.**
 17 **And we had an idea for a boat landing back there**
 18 **behind the depot.**
 19 Q. All right. I see the depot. Was this map that
 20 we're looking at part of the submission?
 21 **A. When I, when I took the job they gave me that**
 22 **book, and these were folded inside the book, so I**
 23 **can't be sure, but I assume that they were. But**
 24 **there are some of these in the book. This is in the**
 25 **book, I believe.**

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1 Q. Okay. Well, we'll --
 2 MR. BROCKETT: Hey, Scott, let's go
 3 off the record for a minute.
 4 MR. TUCKER: Sure. Fine.
 5 THE VIDEOGRAPHER: We are going off
 6 the record. It's 2:38 p.m.
 7 (Short break)
 8 THE VIDEOGRAPHER: Okay. We are back
 9 on the record. It's 2:41 p.m.
 10 BY MR. TUCKER:
 11 Q. All right. Ms. Key, we looked at this booklet
 12 that says City of Ozark Concepts for Trail
 13 Development. It says Revised September, 1997.
 14 And these were the plans that were
 15 submitted for this walking trail to the Corps of
 16 Engineers?
 17 **A. Yes, they were.**
 18 Q. Okay. And then you said there were some maps
 19 that were kept within the book, and they were loose,
 20 and you brought them, copies of them?
 21 **A. Yes.**
 22 Q. Okay. We'll --
 23 **A. Well, I need copies of those. I didn't bring**
 24 **copies. Those are the ones that were in the book.**
 25 Q. Okay.

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Page 29 1 A. I think that's right. 2 MR. BROCKETT: I can make those copies 3 right now, if you want. 4 MR. TUCKER: Okay. Why don't we do 5 that. We'll go off the record. 6 THE VIDEOGRAPHER: We're going off the 7 record. It's 2:42 p.m. 8 (Short break) 9 THE VIDEOGRAPHER: We are back on the 10 record. It's 2:50 p.m. 11 BY MR. TUCKER: 12 Q. Ms. Key, you were telling me that in Exhibit 13 29, which is the booklet that says Concepts for Trail 14 Development, September, 1997, there were some loose 15 drawings in there that we have in front of us now? 16 A. Yes. 17 Q. I'll mark for identification as Exhibit Number 18 30 a drawing that says, Ozark Depot, Planning Only, 19 No Scale. 20 (Exhibit No. 30 was marked.) 21 BY MR. TUCKER: 22 Q. Can you show that to the camera just so that we 23 can see it? 24 A. (Witness complies.) 25 Q. Thank you, ma'am. You can sit it down in front	Page 31 1 Exhibit 29, and that -- you told me that was just a 2 drawing that was loose and kept in the book: is that 3 right? 4 A. Yes. 5 Q. Will you hold that up for the camera, please? 6 A. (Witness complies.) 7 Q. Okay. And I see a dark dotted line that says 8 Path Number One. Do you see that? 9 A. Yes. 10 Q. And what does "Path Number One" mean? 11 A. That was the beginning of the trail. It 12 started at the depot, went back to the east, crossed 13 over the track and went back to the east. 14 Q. And it looks like it only goes back to the east 15 for a very short distance after it crossed the track; 16 is that right? 17 A. That's what this map shows, but the actual plan 18 goes all of the way around the back side of what we 19 know as Chrisman Ready Mix and around Gar Creek and 20 comes out behind the Butterball plant. 21 That will be in the walking trail book, the 22 full plan. I don't know about these maps. They are 23 just showing parts of it. 24 (Exhibit No. 32 was marked.) 25
Page 30 1 of you. Do you know who prepared that? 2 A. Western Arkansas Planning and Development. 3 Q. Who? 4 A. Western Arkansas Planning and Development. 5 Q. Okay. 6 A. It was part of that walking trail plan. 7 Q. And it looks like the original river walk was 8 going to begin east of the depot; is that right? 9 A. Yes. 10 Q. And it's going to cross the tracks and then go 11 back to the west between the tracks and the Arkansas 12 River? 13 A. Yes. 14 Q. And where it says River Walk going across the 15 tracks, do you see that? 16 A. Yes. 17 Q. Was that at the location of what you call the 18 Oliver Street crossing, or was that at a different 19 location? 20 A. That's the Oliver Street crossing. 21 (Exhibit No. 31 was marked.) 22 BY MR. TUCKER: 23 Q. Okay. Then what I'm going to mark as Exhibit 24 Number 31, which is another one of these loose 25 drawings that was in the trail development book,	Page 32 1 BY MR. TUCKER: 2 Q. All right. I'll hand you what I'll mark as 3 Exhibit Number 32, and was this also one of the naps 4 in the trail book that you said was loose? 5 A. Yes. 6 Q. It says Path Number Two in the lower right hand 7 corner, that -- the black line looks like it starts 8 north of the tracks and goes into town. Is that 9 correct? 10 A. Yes. 11 Q. All of the way to the courthouse? 12 A. That's what it appears to be. 13 Q. Okay. I take it you didn't have any part in 14 preparing these drawings? 15 A. No. 16 Q. Remember to let me finish the question. 17 A. Sorry. 18 Q. That's okay. 19 (Exhibit No. 33 was marked.) 20 BY MR. TUCKER: 21 Q. I'll hand you Exhibit Number 33. This looks 22 like it says, Path three in the lower left, and it 23 starts at the courthouse and then goes, basically, to 24 the east down Commercial Street and up to College 25 Street. Is that correct?

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Page 33 1 A. Yes. 2 Q. Okay. Thank you, ma'am. 3 A. Uh-huh. 4 Q. Okay. So you told me the original plan was 5 just to have the walking trail, no river development 6 in the river. The trail was the first plan? 7 A. The trail was -- yes. Yes, sir. 8 Q. Okay. And then -- 9 A. And possibly a dock behind the depot. 10 Q. Was the next iteration of the plan the blow-up 11 board that you showed me with the pier sticking out 12 into the water? 13 A. Yes. 14 Q. And did you say that was formally submitted to 15 the Corps or just shown to them as a -- 16 A. It was submitted, but it was not a very good 17 application. I did it. 18 Q. And that application was denied? 19 A. Yes. 20 Q. By the Corps? 21 A. Yes. 22 Q. And then the other blow-up board that you 23 showed me with the cantilever dock, was it formally 24 submitted to the Corps? 25 A. No.	Page 35 1 reading it correctly, January 26 of 2010. Can you 2 see that date down there? 3 A. That's what we think it says, yes. (Witness 4 reviews document.) Yes. 5 Q. Okay. And it shows a -- I'll let you look at 6 the copy. It shows a, it says, Fixed Platform and 7 Mooring Docks. Do you see that? 8 A. I see the Mooring Docks, yes. 9 Q. And it says Fixed Platform? 10 A. Yes. 11 Q. It looks like it also has a -- is that a 12 pedestrian tower on the left-hand side going over the 13 railroad tracks? 14 A. Yes. 15 Q. And then on the right-hand side of this page, 16 would that be another pedestrian tower? 17 A. No. That would, that would be the crossing, I 18 think. It's this plan right here. That's what it 19 looks like to me. 20 Q. Okay. Hold that up, if you would, to the 21 camera. This is a drawing, an animated drawing of 22 what Exhibit 34 is. Is that right? 23 A. I think so. There is a little bit of 24 difference, unless -- I mean, I'm not sure what that 25 is, but that's the difference. There's ladders here,
Page 34 1 Q. Okay. That was just a, what would you say, a 2 conceptual idea -- 3 A. Yes. 4 Q. -- of what you hoped to have in the river? 5 A. Yes. 6 Q. Okay. 7 A. We were just trying to find what they would 8 accept. 9 Q. Understood. What is the next plan that was 10 submitted to the Corps? Would that be Exhibit 28, 11 which has a A1.0 on it? 12 A. I'm not sure if these were submitted to the 13 Corps or to the railroad. I think these were -- I 14 think they were submitted to the Corps, but you would 15 have to ask the architect for sure. 16 Q. Okay. Since we've gotten out of order, I'm 17 going to withdraw Exhibit Number 28 and just go with 18 our next number, which is Exhibit Number 34. 19 (Exhibit No. 28 was withdrawn.) 20 (Exhibit No. 34 was marked.) 21 BY MR. TUCKER: 22 Q. And these were drawn up by Terry Burruss; is 23 that correct? 24 A. Yes. 25 Q. And at least on this copy it looks like, if I'm	Page 36 1 and that looks like some kind of a place to tie on, 2 or maybe it's a slip. 3 Q. Okay. Was, was this plan that's shown in 4 Exhibit 34, was it submitted to the Corps of 5 Engineers? 6 A. I believe that the architect submitted those, 7 and the Corps would not talk to him because we didn't 8 have the crossing back, but you'll have to clarify 9 that with him. 10 Q. All right. That would be Mr. Burruss? 11 A. Yes. 12 Q. Did, did he submit plans directly to the 13 Corps on your behalf, or did the City of Ozark submit 14 them? 15 A. He did submit some on our behalf. 16 Q. And like, like I said, this Exhibit 34 is dated 17 January 26, 2010. What was the next revision to the 18 plans? 19 A. As far as we were concerned, when we -- where 20 is -- this one, I think. 21 Q. Okay. 22 A. I showed you this earlier, the idea of a little 23 park east, east of the Oliver Street crossing, along, 24 to go along with the walking trail, because there's a 25 wide area there.

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Page 37 1 Q. And -- 2 A. And this is not a formal plan. This is a 3 conceptual thing. 4 Q. Sure. And what is that picture? Where did you 5 say that came from? 6 A. Kentucky, from a little town in Kentucky. I 7 can't remember the name of it. 8 Q. Was that park actually submitted to the Corps 9 of Engineers? 10 A. This park? 11 Q. Yes, ma'am. 12 A. No. Not by us. 13 Q. Okay. Or by the architect? 14 A. No. This was -- the architect had nothing to 15 do with this. 16 Q. Okay. 17 A. It's just something we saw that we thought 18 would fit there, and we liked it. 19 Q. This plan that we refer to as Exhibit 34 says 20 A1.0 dated January 26, 2010. Has there been another 21 plan submitted to the Corps after this one? 22 A. Not to my knowledge, because I think that's 23 when they told us we could not -- they wouldn't look 24 at anything else until we got the crossing back. 25 See, we had the crossing when we did the walking	Page 39 1 there and tried different locations for -- I think 2 this is for the overhead and for the at-grade 3 crossing. Is that not right? Yes. And they go with 4 this letter. 5 Q. And the letter that you're referencing is dated 6 November 29, 2010? 7 A. Yes. 8 Q. It's to Mr. Charles Felkins, sent by Mr. Terry 9 Burruss? 10 A. Yes. 11 Q. And it says -- Ms. Key, if you'll read along 12 with me, it says, Attached please find our proposed 13 layout for the Main Street River and Rail project for 14 your review and approval. 15 The layout incorporates all of the items 16 discussed in our September meeting. Per our 17 discussion, the phase one crossing, as would any 18 future crossing, will be accomplished by a pedestrian 19 bridge over the track area. 20 Do you see that? 21 A. Yes. 22 Q. At least in this letter he doesn't say anything 23 about an at-grade crossing; does he? 24 A. Well, he submitted the, the surveys for the 25 at-grade crossing.
Page 38 1 trail plan, so they gave us the leases. 2 Q. Okay. That was in 1997? 3 A. Well, yes. The leases came through in 2001, 4 but we submitted it in 1997. 5 Q. Do you remember what month the leases came in 6 in 2001? 7 A. I don't have that information. 8 Q. Okay. So -- 9 A. I -- 10 Q. -- if I understand you correctly, there have 11 been no further plans submitted to the Corps of 12 Engineers after Exhibit Number 34? 13 A. To my knowledge. 14 Q. Okay. 15 A. There may have been things going on between the 16 architect, but they cut us, communications off as far 17 as giving us any kind of permits. We've talked to 18 him about the marina on the other side, but not about 19 this side. 20 Q. Okay. We'll come to that. Let's just go 21 through the rest of your documents. What else do you 22 have, Ms. Key? 23 A. Well, here's a letter from the architect, Terry 24 Burruss to Mr. Charles Felkins submitting some 25 surveys, because we, we surveyed the property down	Page 40 1 Q. Well, but does his letter to Mr. Felkins 2 mention any -- 3 A. Well, let me read it again. 4 Q. Okay. 5 A. As would any future crossing be accomplished by 6 a pedestrian bridge. That's a future crossing over 7 the track. We are very excited about this project. 8 Appreciate your guidance in moving forward. Is 9 there -- if there are any questions -- I guess it 10 does not specifically say an at-grade crossing in the 11 letter. 12 MR. TUCKER: Okay. What we'll do is 13 we'll mark this letter to Mr. Felkins dated 14 November 29, 2010, as Exhibit Number 35. 15 (Exhibit No. 35 was marked.) 16 BY MR. TUCKER: 17 Q. And it also consists of several drawings. I'll 18 count the pages. It looks like five pages of 19 drawings; is that correct? 20 A. Yes. 21 Q. I'll keep all of this together and paperclip it 22 as Exhibit number 35. 23 A. Okay. 24 Q. What else do you have there, Ms. Key? 25 A. This is a sketch that was done by Terry

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Page 41 1 Burruss. It's just a survey sketch, and it shows an 2 optional pedestrian crossing here, and that would -- 3 and then, I guess that's the Oliver Street crossing. 4 I'm not real sure. 5 And I don't know exactly what, why he did 6 this or where it came from. I just found it in the 7 file, and you said to bring everything. 8 Q. Sure. 9 A. But this would be something you would have to 10 probably ask Terry Burruss about. 11 Q. Okay. And at least the first page says 12 March 6th, 2012? 13 A. Yes. 14 Q. The second page at the bottom says January 30, 15 2012? 16 A. Yes. 17 Q. Okay. 18 A. That looks like the platforms out there, so 19 that may go with that other drawing. 20 MR. TUCKER: Okay. We'll mark the 21 January 30, 2012, drawing from Mr. Burruss 22 as Exhibit Number 36. 23 (Exhibit No. 36 was marked.) 24 MR. TUCKER: And the one that is dated 25 March the 6th, 2012, as Exhibit Number 37.	Page 43 1 Q. Closer to the curve? 2 A. Yes. 3 Q. Okay. 4 A. But -- yes, that's what he said. 5 Q. Okay. But, again, I take it he did not say, 6 And Ozark can put in a crossing right there? 7 A. No. He always made it very clear that he was 8 not the decision-maker and that -- he would tell me 9 we could try this, we could try that -- 10 Q. Okay. 11 A. -- but -- 12 Q. Go ahead. I didn't mean to cut you off. 13 A. No, that's okay. 14 Q. Okay. All right. Ms. Key, if we'll keep 15 looking at the other items that you brought. 16 A. Well, I just copied everything, and I don't 17 know which -- this is something from the attorney to 18 the mayor, which I just copied it. I really don't 19 even know what it is. 20 Q. May I see it? 21 A. Is that something that -- 22 Q. It's an email dated January 15, 2014, from 23 Christopher Brockett to then Mayor Carol Sneath. Is 24 that correct? 25 A. Yes.
Page 42 1 (Exhibit No. 37 was marked.) 2 BY MR. TUCKER: 3 Q. In, in Exhibit 36, Ms. Key, do you see where 4 he's got the train depot? 5 A. Yes. 6 Q. And then there's lines going across the tracks 7 that says at-grade crossing, and that's actually west 8 of the train depot -- 9 A. Yes. 10 Q. -- correct? 11 A. Yes. 12 Q. So that would not be where the -- 13 A. No, that's where the -- they said would be 14 safer, so we drew it down here. When they said -- we 15 submitted request for the Oliver Street crossing like 16 a couple of different times and made some changes, 17 and then we had a meeting with the Highway Department 18 and with Mr. Felkins, Scott Tucker -- I mean, 19 Scott -- Mark Short, and they said it would be safer 20 down here, so we started trying to get it moved. 21 Q. Now Mr. Felkins didn't say that Ozark could 22 have an at-grade crossing to the west of the train 23 depot; did he? 24 A. Mr. Felkins said that it would be safer there 25 than it would be at the other area.	Page 44 1 Q. We may have this; we may not. 2 A. You -- 3 Q. I'll go ahead and mark that as Exhibit 38. 4 (Exhibit No. 38 was marked.) 5 A. I think that you probably have it, but... 6 Q. All right, ma'am. 7 A. This is a copy of a page out of our address 8 book from 1962. This is the address book that I was 9 given by my, by James Gilmer, the former Main Street 10 director. It's just an old address book, and this 11 is -- 12 Q. Can you hold that up for the camera there? 13 A. (Witness complies.) This is the way Ozark 14 operated back then, and as you can see, this is the 15 only thing I have that's not -- it's so old. 16 This is a copy he gave me in 1996. And on 17 page 26 you'll see Oliver Street and the residents 18 and the lumber company that was located there. 19 Q. Okay. We've already made exhibits -- 20 A. For that? 21 Q. -- out of these documents, yes, ma'am, in 22 Mr. McNutt's deposition, so I will hand you those 23 back. 24 A. Okay. This is probably not even -- this is not 25 even the area in question, so I don't think you want

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1 that. 2 Q. Okay. 3 A. This is a letter from Mr. George Soliz, who I 4 think you interviewed already, and you probably have 5 that. 6 Q. Yes, ma'am, I do. It's dated September 9, 7 2013? 8 A. Yes. 9 Q. By the way, speaking of Mr. Soliz, I believe he 10 told me that his first contact came from you; is that 11 right? 12 A. Yes. 13 Q. How did you hear about Mr. Soliz? 14 A. I got a reference from Mr. Ruck from Garver 15 Engineering. 16 Q. What did Mr. Ruck say to you? 17 A. I called and asked him if he knew any safety 18 experts for the railroad, and he gave me a list of, I 19 think, about four people, and he ended up with 20 George. 21 Q. He didn't -- 22 A. He met him at a convention or something, a 23 railroad convention, I think. 24 Q. Mr. Ruck met Mr. Soliz? 25 A. Yes.	1 Q. It's dated at the bottom June 19, 2013? 2 A. Yes. 3 Q. Do you know what he did to put this information 4 together? 5 A. No. He, he just does a lot of research, and he 6 put it together and gave it to me. I think you'll be 7 talking to him next week. 8 Q. Okay. The -- you're familiar that the Corps of 9 Engineers began and completed the McClellan-Kerr 10 navigation project, which raised the Ozark pool and 11 flooded quit a bit of land on the north side -- 12 A. Yes. 13 Q. -- of the river? 14 A. Yes. 15 Q. Okay. To your knowledge after the pool was 16 flooded was the only business that used any land 17 south of the railroad tracks the propane company? 18 A. As far as I know. 19 Q. Okay. I'll go ahead and mark this as Exhibit 20 Number 40. 21 (Exhibit No. 40 was marked.) 22 BY MR. TUCKER: 23 Q. Did you have any input into the creation of 24 this document, or was this just Mr. Gattis? 25 A. That's Mr. Gattis.
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1 Q. Do you remember any of the other names of on 2 the list? 3 A. There was -- I don't remember the lady's name, 4 Teress (phonetic), I think. I can't remember her 5 last name, but she was with a company in Missouri. 6 Q. Okay. 7 A. She referred us to an attorney in Chicago, 8 and -- 9 Q. Did you make the decision to hire Mr. Soliz? 10 A. I think we made that as the city and 11 Christopher. 12 Q. All right. And what else do you have there in 13 your stack? 14 A. This is a copy of the highway department 15 closing, the dates that they show the, how the 16 crossing was... 17 MR. TUCKER: Okay. I'll mark that as 18 Exhibit 39. 19 (Exhibit No. 39 was marked.) 20 BY MR. TUCKER: 21 Q. What do you have next, ma'am? 22 A. This is the same thing from Mr. Soliz. These 23 are businesses that were using Oliver Street to 24 access the railroad tracks, and I got that from 25 Mr. Royce Gattis.	1 Q. It says Sources, Kenneth Smith, manager of FS 2 Lumber Company. Do you know Kenneth Smith? 3 A. Yes. 4 Q. Is he still an Ozark resident? 5 A. Yes. 6 Q. Harrison Allred, employee of Peach Valley Gas 7 Company, Sun Gas Company, and Synergy Energy? 8 A. Yes. 9 Q. Is Mr. Allred an Ozark resident? 10 A. Yes. 11 Q. Does he still live around here? 12 A. Yes. They are both on your list to be deposed. 13 Q. Thank you. 14 A. This is a list of your side tracks that Royce 15 Gattis put together as well. 16 Q. All right. It's unsigned, but it at the top 17 says there are four UP switches to side tracks in our 18 immediate and general area. I'll mark that as 19 Exhibit Number 41. 20 (Exhibit No. 41 was marked.) 21 A. Okay. You asked for emails. This is an email 22 from Bill Ruck to me. 23 Q. What is the date on it, please? 24 A. It's May the 11th, 2012, or I think he sent it 25 on 2010.

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Page 49 1 Q. Okay. All right. I'll make that Exhibit 2 Number 42. 3 (Exhibit No. 42 was marked.) 4 A. This is another email from Mr. Ruck. 5 Apparently she copied it with the note left on it. 6 And this is a follow-up to the meeting that we had in 7 Little Rock that you attended. 8 Q. At the state capitol? 9 A. Yes. I'm going to have to get you a better 10 copy of that. 11 Q. Okay. What we'll do is we'll mark it as 12 Exhibit 43, and if you can get a better copy, we can 13 substitute it. How about that? 14 A. Okay. And does -- this may be the second page 15 to that. 16 (Exhibit No. 43 was marked.) 17 BY MR. TUCKER: 18 Q. Okay. 19 A. And this is a letter from, to Bill Gossage from 20 Thad Call, I believe, yes. You would already have 21 this. This is the follow-up to our meeting in Little 22 Rock. 23 Q. All right. 24 A. And this is the main -- 25 Q. We'll go ahead and mark that as Exhibit 44.	Page 51 1 Bill Ruck is going to be in response to this, too. 2 If you want to put that with it. 3 Q. Okay. We'll mark these documents as Exhibit 4 Number 47. 5 (Exhibit No. 47 was marked.) 6 A. This is a letter from the mayor, from Colonel 7 Masset with the Corps of Engineers regarding the 8 floating platform. That would be a communication 9 that we did have with the Corps after those drawings, 10 I'm sure. 11 Q. The date that's stamped at the top says 12 March 14, 2013? 13 A. Yes. 14 Q. Hold on just a second. It says, Dear Mayor 15 Sneath, please reference your letter dated 16 February 13 of 2013, regarding the request for a new 17 mooring facility on the left descending bank of the 18 Arkansas River. Is that right? 19 A. Yes. 20 Q. We will mark that as Exhibit 48. 21 (Exhibit No. 48 was marked.) 22 A. This is a letter from Thad Call to our mayor, 23 which I'm sure you have. 24 Q. Ms. Sneath? 25 A. Yes.
Page 50 1 (Exhibit No. 44 was marked.) 2 A. And here's our response to that letter, to each 3 paragraph in that letter. 4 Q. All right. And that is a seven-page document. 5 At the top -- 6 A. Fifteen paragraphs, yes. 7 Q. All right. We'll make this 45. 8 (Exhibit No. 45 was marked.) 9 A. And this is an email that I sent to Mr. Bill 10 Donnor asking for permission to cross the tracks. No 11 one ever responded. 12 Mr. -- I finally did -- he had a death in 13 the family, I think, Mr. Donnor. And he did call me, 14 and he had -- he told me that he had contacted Union 15 Pacific, and he was surprised that we hadn't heard 16 anything. But we never did, so they never gave us 17 permission to cross. 18 Q. We'll mark your email dated March 29, 2013, as 19 Exhibit 46. 20 A. Okay. 21 (Exhibit No. 46 was marked.) 22 A. This is the meeting that you attended in Little 23 Rock at the capitol. This was our agenda, a sign-in 24 sheet for who attended. These are the minutes that I 25 took of the meeting. The email that you have from	Page 52 1 Q. Just to keep it all together for exhibit 2 purposes, we'll make that Number 49. 3 (Exhibit No. 49 was marked.) 4 BY MR. TUCKER: 5 Q. It's dated February 11, 2013. 6 A. This is an attorney, the Attorney General's 7 opinion when we asked for clarification on whether or 8 not the crossing could be removed. 9 Q. And it's dated November 19, 2012? 10 A. Yes. 11 MR. TUCKER: I'll mark that Exhibit 12 Number 50. 13 (Exhibit No. 50 was marked.) 14 BY MR. TUCKER: 15 Q. And is this signed by Dustin McDaniel, or 16 someone signed for him? 17 A. Well, it's supposed to be Dustin McDaniel. 18 Yes, that would be his signature. 19 Q. Okay. And it looks like on page two it says, 20 The Commission's regulatory authority has been 21 preempted by federal law. Hence, all the rules for 22 removing or reestablishing railroad crossing must be 23 analyzed according to the regulations of the federal 24 agency known as the Surface Transportation Board, 25 which is the entity Congress vested with the

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1 regulatory authority over these matters.
 2 Is that what it says there?
 3 **A. Yes.**
 4 Q. Okay. All right. We'll put Exhibit 50 in our
 5 stack.
 6 **A. This is a letter to Patrick Halsted with, like,**
 7 **exhibits, I think, through R, I believe, is the last**
 8 **one. And you have this already, but that's another**
 9 **copy of it.**
 10 Q. And it's a letter from Ms. Sneath to Patrick
 11 Halsted --
 12 **A. Yes.**
 13 Q. -- dated November 30, 2012?
 14 **A. Yes, in response to the letter that Patrick**
 15 **Halsted sent to her.**
 16 Q. Okay. Just so that -- I know we have this, but
 17 so that we can make an exhibit, I'm going to mark it
 18 Number 51; okay?
 19 **A. Okay.**
 20 **(Exhibit No. 51 was marked.)**
 21 **A. This is a letter from the Federal Railroad**
 22 **Administration, completed their investigation.**
 23 Q. And it's dated November 13, 2012. sent to Mayor
 24 Sneath?
 25 **A. Yes. And this is also regarding this same**

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1 **issue. This was to Mr. Washington to ask for the**
 2 **investigation.**
 3 Q. Okay. I will -- let's see. I'm going to mark
 4 the FRA letter two pages as Exhibit 52.
 5 **(Exhibit No. 52 was marked.)**
 6 **A. Okay. This is a letter from --**
 7 Q. I'm going to let you keep the request to
 8 Mr. Richard Washington?
 9 **A. This is a letter that I'm sure you have from**
 10 **Charlie Felkins denying the crossing.**
 11 Q. Dated May 9th, 2012?
 12 **A. Yes.**
 13 Q. It looks like it says -- Mr. Felkins' letter,
 14 which I'm going to mark as Exhibit 53.
 15 **(Exhibit No. 53 was marked.)**
 16 **A. What's the date again?**
 17 Q. May 9th, 2012.
 18 **A. Okay.**
 19 Q. It says, Union Pacific will not approve the
 20 city's request for an at-grade pedestrian crossing.
 21 But it also says, Union Pacific will consider a
 22 request for a pedestrian overpass to cross its
 23 tracks.
 24 Is that right?
 25 **A. Yes.**

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1 Q. Okay.
 2 **A. Now this is a chain, an email chain between**
 3 **Charlie Felkins and myself, which was the original,**
 4 **the beginning of it when I asked for him to have a**
 5 **meeting, because we had completed the engineering**
 6 **that they said they needed, and this is the chain.**
 7 Q. Okay, two pages that I'll mark as Exhibit
 8 Number 54.
 9 **(Exhibit No. 54 was marked.)**
 10 **A. I have all of this -- it's actually completely**
 11 **backwards. This is -- there was a meeting in**
 12 **Washington, D.C. that Senator Boozman called.**
 13 **Our Congressional offices were all there,**
 14 **and they met with Mr. Mike Rock of Union Pacific**
 15 **regarding the crossing.**
 16 **And in the meeting Union Pacific somehow or**
 17 **another they, they were confused, and they thought we**
 18 **were asking for an overhead crossing, which we were**
 19 **not, so.**
 20 Q. When you say "they were confused," who was
 21 confused?
 22 **A. Well, Senator Boozman was confused by Mr. Rock,**
 23 **I guess, because he told them they were there**
 24 **discussing an overhead crossing.**
 25 Q. Okay. And it's dated June of 2011?

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1 **A. Yes.**
 2 Q. All right. We'll mark that one as number 55.
 3 **(Exhibit No. 55 was marked.)**
 4 **A. And there was a conference call that I**
 5 **participated in that was -- okay. Here is the letter**
 6 **that we wrote to Mr. Felkins to clear up that**
 7 **misunderstanding.**
 8 Q. Were you present, by the way, at that meeting
 9 in Washington, D.C.?
 10 **A. No. Philip Moore from Senator Boozman's office**
 11 **called me, and we had a conference call with Philip,**
 12 **Senator Pryor's office, and Steve Womack's office.**
 13 Q. And who?
 14 **A. Steve Womack. I'm thinking it was his**
 15 **attorney. She's -- I can't think of her name. I**
 16 **think it's on there.**
 17 Q. Adrieal Churchill?
 18 **A. Yes, Adrieal Churchill.**
 19 Q. Okay. And then you said you wrote a letter to
 20 Mr. Felkins dated June 30, 2011, or Mayor Sneath did.
 21 It's two pages?
 22 **A. Yes.**
 23 Q. We'll make that --
 24 **A. The letter, the letter was originated with me,**
 25 **and she signs the letters.**

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Page 57 1 Q. Oh, okay. So you, you drafted it, and she 2 signed it? 3 A. Yes. 4 Q. Okay. We'll make that Exhibit 56. 5 A. Okay. 6 (Exhibit No. 56 was marked.) 7 A. Okay. What date are we up to? This is July 8 18th. This is the response to the letter that you 9 just marked. 10 Q. And when you say the response to the letter, 11 it's dated July 18, 2011, and it's from Charles 12 Felkins, and it's two pages? 13 A. Yes. 14 Q. All right. Give me one second. 15 (Exhibit No. 57 was marked.) 16 A. Okay. Here's the scribbles on that. 17 Q. One second, please. 18 A. Sure. 19 Q. All right, ma'am. 20 A. All right. This is just scribbled notes that 21 were from the conference call that I was speaking of 22 earlier, and I -- it probably doesn't mean anything. 23 It just lists who, who was on the conference call and 24 what Union Pacific told Congressman, I mean Senator 25 Boozman, that we had not done enough detailed	Page 59 1 Q. By the way, I'm marking the sign-in sheet as 2 Exhibit 58. 3 (Exhibit No. 58 was marked.) 4 A. What was the date on that again, September? 5 Q. September the 1st of 2010. 6 A. Let's see if I had anything else on it. 7 Q. And I'll mark the one-page document that you 8 handed me that says Purpose of Meeting at top, and 9 then another bullet point, Goal of the Riverfront 10 Development Project. 11 (Exhibit No. 59 was marked.) 12 BY MR. TUCKER: 13 Q. Do you remember what Union Pacific had to say 14 in the September 1st, 2010, meeting? 15 A. That was the meeting that they told us no. 16 That's the first time they've ever said absolutely 17 no, and that was Paul Benham that said no. 18 He said it -- then Mike Short told us there 19 was a possibility that they might take the switch out 20 down there and give us more area if we wanted to do 21 an overhead crossing. 22 And we left there pretty depressed but a 23 little bit -- that kind of picked it back up because 24 we thought, well, maybe we can get the money and do 25 an overhead crossing.
Page 58 1 engineering for them to make a determination. So 2 that's why we did more engineering. 3 Q. Okay. I'll hand you that back. 4 A. Okay. You can't read it anyway. 5 Q. No, ma'am. 6 A. Okay. This is a letter to Mr. Felkins from 7 Terry Burruss dated November -- is this the one I 8 already gave you? I think it is. This drawing goes 9 with it. 10 Q. Yes, ma'am. It says, Per our discussion, phase 11 one crossing, as would any future crossing, will be 12 accomplished by a pedestrian bridge over the track 13 area. 14 A. Okay. You already have that, then? 15 Q. Yes, ma'am. 16 A. Okay. This is a meeting that we had upstairs 17 that, in our office with these people. We had 18 Charlie Felkins, Mike Short, Paul Benham. Senator 19 Lincoln's office was there, our engineer, several 20 people from the Corps of Engineers, the mayor. 21 Q. That was here in Ozark? 22 A. Yes, on 9/1/2010. 23 Q. What do you recall from this meeting as far as 24 what Union Pacific had to say? 25 A. Here's the purpose of the meeting. This was,	Page 60 1 Q. A pedestrian overpass? 2 A. Yes. But they were supposed to contact us and 3 let us know if they were going to take the switch 4 out, which they didn't. I had to contact them. 5 I think I have something from Paul Benham 6 here. I don't remember if it was just a note or 7 what, but he told me that they weren't -- I called 8 him to find out if they were going to take the switch 9 out, and he said they will not take it out and make a 10 decision on it until after the legislative session. 11 And then after the legislative session I 12 contacted them again, and they said they weren't 13 going to remove the switch. So at that point we went 14 back for our grade crossing. 15 Q. When you said the switch, what switch are you 16 talking about? 17 A. Well, the side track that's there at Oliver 18 Street. 19 Q. Oh, you mean the entire siding? 20 A. Yes. They were removing -- they told me that 21 they were removing sidings, and they were -- because 22 they were having to pay \$20,000 or some amount for 23 each siding, or something like that. 24 Q. Now I know what a switch is. That allows -- 25 A. Well --

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Page 61 1 Q. -- a train to get -- 2 A. Uh-huh. 3 Q. -- from one track to another. So was, was 4 there a particular switch that was involved? Do you 5 know one way or the other? 6 A. Whatever that is. If it's a switch or a side 7 track? I mean, they park trains on it, and they also 8 can park over there if another train goes by, I 9 believe. 10 Q. Was it your understanding Union Pacific was 11 considering removing the entire siding in Ozark? 12 A. Yes. 13 Q. And where did you gather that understanding? 14 A. Mike Short at the meeting. And Charlie Felkins 15 and Paul Benham were there, and they agreed to look 16 into it. 17 Q. If the siding had been removed what was Ozark's 18 response to that going to be? 19 A. Well, we were hoping that we would be able to 20 get some funding to build a crossing over the tracks. 21 Q. You mean a pedestrian overpass? 22 A. Yes. 23 Q. Okay. What difference would it make whether 24 the side track was there or not? 25 A. Well, that's what they -- that was their	Page 63 1 This is from the beginning. In August of 2 2009 this letter was to Mr. Felkins emphasizing that 3 we would only be using the crossing as an interim 4 crossing. 5 Mr. Felkins suggested to me that if I 6 applied for it as an interim crossing, I would have a 7 better chance of getting it. So we applied for it 8 again as an interim crossing, and they turned it 9 down. 10 Q. And this letter is signed by then Mayor Vernon 11 McDaniel? 12 A. Yes. 13 Q. All right. It's dated August 20, 2009, and I 14 will mark that as Exhibit 61. 15 (Exhibit No. 61 was marked.) 16 A. Okay. I had sticky notes on these, and she 17 made the copies with the notes still on there. 18 And this is from Charlie Felkins, and I 19 know you have this already. 20 Q. And, by the way, the -- this letter from then 21 Mayor McDaniel, August 20, 2009, he says, We would 22 like to emphasize that the at-grade crossing will be 23 used as an interim crossing until the completion of a 24 pedestrian tower at the west end of our proposed 25 riverfront development?
Page 62 1 suggestion, that we would have more room for an 2 overhead. 3 That was never where we intended to put an 4 overhead, but they suggested to us that that would 5 give us more area if they removed it. 6 Q. Okay. 7 A. So it gave us a little hope. 8 Q. What else do you have, Ms. Key? 9 A. Here's an email from Philip Moore from Senator 10 Boozman's office writing to express his support for 11 the project. 12 MR. TUCKER: All right. We'll make 13 that Exhibit Number 60. 14 (Exhibit No. 60 was marked.) 15 BY MR. TUCKER: 16 Q. Who is Philip Moore? 17 A. Philip, he is the projects person for Senator 18 Boozman in Washington, D.C. 19 Q. Okay. 20 A. Okay. These are repeats. This is the same 21 one, I believe, that I gave you that's regarding the 22 request for easements for Union Pacific tracks. 23 We would like to emphasize that the 24 at-grade crossing will be used as an interim -- okay. 25 Now this is from -- everything was backwards.	Page 64 1 A. Yes. 2 Q. Okay. And it says, When completed the at-grade 3 crossing will only be used for service vehicles? 4 A. Yes. That was our plan, but they turned it 5 down, so. 6 This is a letter from Mayor McDaniel 7 regarding the application for the new at-grade 8 crossing. 9 Q. To Charlie Felkins -- 10 A. Yes. 11 Q. -- dated October 1, 2009? 12 A. Yes. 13 Q. And it says -- no, it's a letter from Charlie 14 Felkins to Mayor McDaniel dated October 1, 2009? 15 A. Correct. 16 Q. And it -- he references a new at-grade crossing 17 and a new pedestrian bridge. And he says, Union 18 Pacific doesn't have enough information about the 19 proposed project. Is that correct? 20 A. Yes. 21 MR. TUCKER: Mark that as Exhibit 22 Number 62. 23 (Exhibit No. 62 was marked.) 24 BY MR. TUCKER: 25 Q. Okay.

16 (Pages 61 to 64)

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1 A. And this is just hand-scribbled notes from a 2 phone conversation on December 10th, '08 with 3 Mr. Felkins. 4 He recommend that we make a new request 5 with a plan for a crossing tower asking for an 6 interim easement for the at-grade crossing, which is 7 what I just explained. 8 And he says the -- he had told me the 9 highway department has the final say-so, and in the 10 end the railroad would have to comply with the 11 highway department recommendation, and also political 12 influence could affect the decision. 13 Q. All right. And these are -- 14 A. But -- 15 Q. -- your notes? 16 A. Yes, from the telephone call, if you -- I hope 17 you can read it. 18 Q. Okay. Dated December the 10th of 2008? 19 A. Yes. 20 MR. TUCKER: I will make that 63. 21 (Exhibit No. 63 was marked.) 22 BY MR. TUCKER: 23 Q. What's next? 24 A. And this is a note to our engineer regarding 25 the city's application. It's been -- it has been	1 submitted. 2 A. Yes. 3 Q. Okay. That's 64. Go ahead. 4 A. This is just a project estimate from the 5 engineer that he gave us to just kind of help me 6 figure out how much it would cost to put the crossing 7 back. 8 Q. You mean the pedestrian overpass? 9 A. No, the crossing that was removed. 10 Q. Okay. It's -- 11 A. We asked for estimates on putting the road 12 back. 13 Q. All right. It's got a -- 14 A. I know. 15 Q. -- a sticky note which was copied on to it 16 which kind of obliterates a lot of the text -- 17 A. Let me -- 18 Q. -- but we'll mark it as 65, and if you can -- 19 A. I can. I have it here. I can't believe she 20 didn't take those sticky notes off. It will be in 21 the back. 22 (Exhibit No. 65 was marked.) 23 BY MR. TUCKER: 24 Q. Why don't we keep -- 25 A. See, I stuck the dates on there.
Page 66	Page 68
1 reviewed. The letter relates to the project the city 2 has been considering for some time. 3 Union Pacific previously discussed with the 4 city it's concerns and unusual characteristics of the 5 proposed crossing site and the project and the safety 6 issues those characteristics raised. 7 Union Pacific reviews -- 8 Q. Let me see that. 9 A. That's yours. 10 Q. Sure. That's a letter from Charlie Felkins to, 11 it says Mr. Andrew Dibble of Mickle Wagner and 12 Coleman, and they are what, the engineers? 13 A. That's the city engineer, yes. 14 Q. I'll mark that as Exhibit Number 64. 15 (Exhibit No. 64 was marked.) 16 A. And this -- 17 Q. And you were a copy of this letter, a copy 18 recipient? 19 A. Yes. 20 Q. Mr. Felkins mentions, he says, Union Pacific 21 has a strong belief that the proposed construction 22 and pedestrian crossings presented grave safety 23 risks. Is that correct? 24 A. Yes. 25 Q. Okay. And will not approve the request as	1 Q. That's okay. Why don't we keep going, and 2 if -- 3 A. All right. 4 Q. We can substitute the correct copies later. 5 A. All right. This is nothing that you need, I 6 don't think. This is a marina investor letter of 7 intent to build the marina. 8 Q. Is that from Mr. Outlaw? 9 A. Yes. Do you want it? 10 Q. I think we've seen that, and I believe it's -- 11 was this to build the marina on the south side of the 12 river? 13 A. Either side, whatever side we could get 14 approved. 15 Q. Okay. 16 A. But he wanted access to this side. That was 17 contingent on access. 18 Q. The north side? 19 A. Yes. 20 Q. Okay. 21 A. And this is a draft that I found on my, on my 22 stack of stuff, and I think you have the original 23 letter that was written to Mr. Felkins from our 24 mayor, Bat Coley. I think you have the letter with 25 the letterhead and everything in that letter that has

17 (Pages 65 to 68)

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Page 69 1 all of the exhibits. 2 Q. (Council reviews document.) I think we do too. 3 I'm going to mark it as Exhibit 66. 4 (Exhibit No. 66 was marked.) 5 BY MR. TUCKER: 6 Q. It's dated December the 14th, 2004. Mayor -- 7 then Mayor of Ozark, C.L. Coley, wrote it to Charlie 8 Felkins. It says, I believe the crossing was removed 9 by the railroad sometime in 2002 to accommodate 10 complaints by a resident about the noise or the train 11 whistle. The resident has since moved on. 12 Do you know who the resident was that 13 complained about the whistle blowing for the 14 crossing? 15 A. Yes. His name was Scott James. His 16 mother-in-law lives in that house now. He moved out, 17 and she moved in. 18 Q. And what is her name? 19 A. The mother-in-law, Mary Francis Gilmer. 20 Q. Does -- is Mr. Gilmer still living? 21 A. No. She, but she is. You have a letter -- you 22 have a copy of this letter from the highway 23 department recommending the crossing, that we be 24 given an at-grade crossing. 25 Q. That's from Scott Bennett dated February 10 of	Page 71 1 A. Did he bring my book back, the riverfront book? 2 Q. I don't believe so yet. 3 A. Is that one of your exhibits? It has the 4 sticker on it. 5 Q. It's withdrawn. Let's go off the record for a 6 minute. 7 THE VIDEOGRAPHER: We are going off 8 the record. It's 3:40 p.m. 9 (Short break) 10 THE VIDEOGRAPHER: We are back on the 11 record. It's 3:48 p.m. 12 (Exhibit No. 68 was marked.) 13 BY MR. TUCKER: 14 Q. Ms. Key, let me hand you a copy of something 15 and an original of what I have marked as Exhibit 68. 16 Can you tell me what that is, please? 17 A. This is the encasement for the railroad, the 18 pipe for the railroad crossing that goes under the 19 crossing. It's for the sewer or the water, that -- 20 I'm not sure which. I think it's for the sewer. 21 Q. And it's not dated; is that right? 22 A. Right. 23 Q. Did sewage used to be piped underneath the 24 railroad tracks into the Arkansas River? 25 A. It went down to the houses that were down
Page 70 1 2005? 2 A. Yes. 3 Q. Yes. 4 A. And I think this is that letter that you have 5 the draft of there, I believe. Is it not? 6 Q. I believe that it is. Now he says, Our city 7 street map shows it as Owens. 8 A. I know. That was a typo. That was my fault. 9 Q. Okay. And it's signed. We'll make that 10 Exhibit 67. 11 A. Okay. I'm going to need a copy of that to go 12 back in. 13 (Exhibit No. 67 was marked.) 14 A. I think that's about it, unless there is 15 something else that -- this is the scribbled notes 16 from the telephone conversation. 17 I'm trying to find the one that you wanted 18 me to get you a copy of. I guess that was it, the 19 letter that we just took out. All right. 20 Q. The large stack of documents that you just put 21 in front of you, Ms. Key, we have copies of those -- 22 A. Yes. 23 Q. -- that we've just gone over? 24 A. That's what this is. 25 Q. All right.	Page 72 1 there, is my understanding. 2 Q. Okay. And, of course, the houses you mentioned 3 after the Ozark pool was inundated, the Corps bought 4 those up, and those were flooded? 5 A. Yes. 6 (Exhibit No. 69 was marked.) 7 BY MR. TUCKER: 8 Q. Okay. And then I'll mark as 69 a copy of a 9 document that you brought with you. It's a little 10 hard to read. Can you tell me what that is, please? 11 A. This is the city water lines that go under the 12 railroad that service those residences that were on, 13 down on Oliver Street. 14 Q. All right. Do you have any other documents 15 you've brought with you that we haven't discussed? 16 I'll give you the original. 17 A. Nothing that you, that you are interested in. 18 Q. Okay. You have some documents here just to 19 your left. What are those? 20 A. These are copies of things that you already 21 have. 22 Q. Okay. Great. Ms. Key, let me get a little bit 23 of background information from you. What's your date 24 of birth, please? 25 A. 3/16/45.

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1 Q. How old does that make you? 2 A. Goodness, 69 until next month. 3 Q. And where were you born? 4 A. Dallas, Texas. 5 Q. Where did you grow up? 6 A. Dallas. 7 Q. Is that where you went to high school? 8 A. Carrollton High School, R.L. Turner. 9 Q. What year did you graduate? 10 A. 1963. 11 Q. Did you go to college? 12 A. No. 13 Q. Do you have any other formal education after 14 high school? 15 A. I have a real estate background, many years of 16 real estate. 17 Q. What is your current employment? 18 A. I'm the director of Main Street Ozark. 19 Q. And when did you first become director? 20 A. 1996. 21 Q. Have you done that continuously for the last, 22 going on 19 years? 23 A. Yes. 24 Q. Did you work anywhere before Main Street Ozark? 25 A. I was a realtor. I was co-owner of a real	1 A. About two years ago. I'm not exactly sure. 2 Q. It went in February of 2000 -- 3 A. I know when it went in. It was after the 4 railroad meeting here in Ozark April 30th of 2013. 5 Q. Do you know who put it up? 6 A. The city had -- I think the 911 office puts up 7 the signs, but we requested it be put up. 8 Q. But there was no road there when the street 9 sign went in; correct? 10 A. No. The roads -- the road was removed in '01. 11 Q. When was the Oliver Street sign taken down? 12 A. Well, that's something we thought you would 13 know. We -- 14 Q. I don't have any idea. 15 A. We don't know how it was taken down. 16 Q. Okay. 17 A. We thought you took it down. 18 Q. What year was it again that you moved to Ozark? 19 A. I moved to Ozark in 1978. 20 Q. Okay. And at that point the Ozark pool as part 21 of the McClellan-Kerr navigation project would have 22 been raised, and the houses that were south of the 23 railroad tracks there would have been flooded; is 24 that right? 25 A. Yes.
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1 estate business. 2 Q. What was the name of the business? 3 A. River Bend Properties. 4 Q. How long did you do that? 5 A. From 1979 until 1996. 6 Q. Are you married? 7 A. Yes. 8 Q. What is your spouse's name? 9 A. Gary Key. 10 Q. Does he work? 11 A. He does now, yes. 12 Q. Where does she work? 13 A. E&E Auto Sales. He's been retired, and he has 14 been working down there the last couple of weeks. 15 Q. Where do you live? 16 A. 8237 Red Oak Drive in Ozark. 17 Q. How long have you lived there? 18 A. Since 1988. 19 Q. Where is that in relation to, say, the depot? 20 A. West, about three miles. 21 Q. At one time there was a, within the last couple 22 of years there was an Oliver Street sign. Do you 23 recall that? 24 A. Yes. 25 Q. Do you know when it went in?	1 Q. Okay. And I'll just call that the flood, so I 2 don't have to keep saying McClellan-Kerr navigation 3 project. 4 A. Okay. 5 Q. When -- after the flood when the water was up 6 did that cover up a portion or all of what you refer 7 to as Oliver Street? 8 A. I don't think it covered any of Oliver Street. 9 It's still there. It turned back to the east and 10 went to the railroad bridge. 11 Q. You, you mean the railroad bridge going over 12 Gar Creek? 13 A. Yes. 14 Q. Of course, there's, there's no street there 15 south of the railroad tracks now? 16 A. Well, today there's not. There was in 2001. 17 Q. Was that a dirt road? 18 A. Yes. 19 Q. Tell me what it looked like going over the 20 crossing? I'm sure it wasn't dirt between the rails. 21 A. It looked like asphalt. You could drive across 22 the tracks, and then it became a dirt road. 23 Q. Dirt on both sides of the tracks, north and 24 south? 25 A. I can't tell you about the, the north side. I

19 (Pages 73 to 76)

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1 don't remember. I think it was just gravel up to 2 the, up to the asphalt, but I don't remember for 3 sure. 4 Q. On the south side it was dirt? 5 A. I think so. 6 Q. Since you've lived in Ozark you've never seen a 7 street sign that said "Oliver Street" at that 8 location, have you, other than the one that was put 9 up a couple of years ago? 10 A. No. We put the street sign up. 11 Q. Two years ago? 12 A. Yes, because -- 13 Q. Before that you don't recall any Oliver Street 14 sign there? 15 A. No. 16 Q. There were no houses or businesses south of the 17 railroad tracks except for some propane tanks from 18 the time you moved here in 1978 on; were there? 19 A. No. 20 Q. And the propane tanks were removed, do you 21 recall about what year? 22 A. I think it was -- it was either near the end of 23 2000 or in 2001. 24 Q. Okay. 25 A. Before they removed the road.	1 Q. Yes, ma'am. 2 A. I don't remember. I didn't pay much attention 3 to the crossing because it was there, and I never 4 dreamed it would be gone. 5 Q. Do you know after the flood and before the 6 crossing was removed whether or not people used that 7 crossing continuously, or was it just every now and 8 then, or do you know one way or the other? 9 A. I have no idea how many people used it. 10 Q. Between 1978 when you came to Ozark and 2001 11 when the crossing was removed, did you drive across 12 the crossing? 13 A. Yes. 14 Q. Very many times? 15 A. Half a dozen maybe. I'm not sure. I drove a 16 few times, because we were planning this development. 17 Q. And was that your purpose for driving over 18 there? 19 A. Yes. I wanted to see what was over there, how 20 much room we had, and -- I don't fish. 21 Q. After the propane tanks were removed was it 22 shortly after that the crossing itself was removed? 23 A. I didn't know the crossing was gone for a long 24 time because the railroad had a lot of construction 25 going on down there, things, cars parked around. And
Page 78	Page 80
1 Q. And since the propane tanks were removed there 2 have been no houses or businesses south of the 3 railroad tracks? 4 A. No. 5 Q. Correct? 6 A. Correct. 7 Q. So that -- Oliver Street after the propane 8 tanks were removed did not, to go over the tracks, 9 didn't serve any public purpose south of the railroad 10 tracks; there were no houses to go to, no businesses 11 or anything? 12 A. It served the public purpose. People still 13 drove over there, fished, access to the river. I 14 know one person that used to pull their little boat 15 across there and fish. 16 Q. Who is that? 17 A. Marshall Chrisman. He's on your list. 18 Q. Do you recall if the, what the crossing surface 19 was made of? Was it crossties that are creosoted? 20 You said there was some asphalt too between the 21 rails? 22 A. I remember the asphalt because it was easy to 23 drive across the tracks. 24 Q. Was it wide enough for two cars or just one? 25 A. You mean to pass each other?	1 it went on for months, and I never really knew it was 2 gone, and -- 3 Q. Once the -- go ahead. I'm sorry. 4 A. I just never thought about it at all. It was 5 there. It was always there, and I thought it would 6 be there. 7 Q. After the propane tanks were removed do you 8 know of people who still used the crossing? 9 A. You couldn't, I guess, use the -- no, I don't 10 know any more than before. 11 Q. Once the propane tanks were removed were there 12 crossties piled up barricading the crossing where a 13 vehicle could not drive over it? 14 A. I don't remember. 15 Q. I think you've told me about the letters you 16 had going back and forth with Charlie Felkins. You 17 said he always said a decision about the crossing 18 would have to be made by somebody higher up than him? 19 A. Yes. 20 Q. Did you talk with anybody else from the 21 railroad about the crossing? 22 A. I'm -- well, Mark, Mark Short, who is your -- 23 Mike Short. 24 A. Mike Short is the person who works here who's 25 over the railroad here in this area, in construction

20 (Pages 77 to 80)

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1 or whatever.

2 And I don't know that we talked necessarily

3 about the crossing, but Charlie is the only one that

4 we discussed actually putting the crossing back.

5 Q. Charlie Felkins' affidavit mentions -- have you

6 read his affidavit?

7 A. No.

8 Q. It mentions that in 2000 or 2001 a resident

9 called him and complained, sometimes angrily, about

10 trains that would blow the horn --

11 A. Uh-huh.

12 Q. -- for that crossing. Do you know anything

13 about those phone calls and who the -- I think you

14 told me the resident's name.

15 A. Scott James.

16 Q. Yeah.

17 A. Yeah, I heard -- Charlie Felkins told me that

18 when I called him to ask him when they were going to

19 put the crossing back, because the day I discovered

20 it was gone I called him.

21 Q. And did Charlie say that the mayor requested --

22 A. No. I don't -- well, now I don't know that he

23 said that, that the mayor requested it. It's

24 possible, but he said that we took the crossing out

25 because this man complaining about the train.

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1 Q. The train horns?

2 A. Whatever, but they still blow the whistle, so.

3 Q. Trains don't blow a whistle as they come

4 through Ozark today; do they?

5 A. Yes. They've never stopped.

6 Q. Okay. Were you at the city council meeting

7 when then Mayor Todd Timmerman showed the council a

8 letter saying the railroad is going to take out the

9 crossing?

10 A. It never happened. I was at -- if there would

11 have been a letter like that, the whole town would

12 have been down there in force.

13 Q. Well, I don't know that it was publicized

14 before the meeting. We deposed Mayor McNutt, and he

15 talked about attending a city council meeting where

16 Mayor Timmerman said, I've got a letter from the

17 railroad, and they are going to take the crossing

18 out. Do you remember attending a meeting like that?

19 A. No. I wasn't invited to a meeting like that.

20 Q. Do you remember Mayor Timmerman or anyone else

21 saying that Ozark requested that the area be a quiet

22 zone?

23 A. No.

24 Q. Do you recall Mayor Todd Timmerman?

25 A. Yes.

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1 Q. Do you know if he requested Union Pacific to

2 take the crossing out?

3 A. No. I do not know that.

4 Q. Tell me about Main Street Ozark. What exactly

5 is Main Street Ozark?

6 A. It's a downtown redevelopment organization. We

7 are responsible for revitalizing downtown. We

8 contract with the City of Ozark to do that.

9 Q. When you say "we contract with the City of

10 Ozark," does the City of Ozark make a financial

11 contribution?

12 A. Yes. They fund the program.

13 Q. To what extent?

14 A. Ninety percent maybe.

15 Q. How much do they pay you?

16 A. They pay -- they pay us \$30,000. We raise the

17 rest?

18 Q. Does that cover your salary?

19 A. Yes. I'm supposed to be a part-time employee,

20 by the way.

21 Q. How many members are there of Main Street

22 Ozark?

23 A. We have ten board members, two ex-officios.

24 Q. And the ex-officios are the mayor and who else?

25 A. The chamber director.

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1 Q. And the chamber director now is?

2 A. Linda Millsap.

3 Q. How long has she been the chamber director?

4 A. She's in her fifth year.

5 Q. And by "chamber" is that Chamber of Commerce?

6 A. Yes. Ozark Area Chamber of Commerce.

7 Q. Was Mr. Gattis the chamber director before

8 that.

9 A. No. He was the president, I think. Year

10 before, year before last he was president. No, last

11 year he was president.

12 Q. Of the chamber?

13 A. 2014, yes.

14 Q. Okay. I'm going to look for an exhibit we used

15 with Mr. McNutt's deposition. It may take me just a

16 minute to get there.

17 Yes, ma'am, it was Number 21 to his,

18 Exhibit Number 21 to his deposition. It looks like

19 Mayor McDaniel signed it on February 22 of 2008. Is

20 that your signature on February 22, 2008?

21 A. Well, it doesn't look like my signature, but

22 what -- what is this?

23 Q. It's an application for a grant, I believe.

24 A. Okay. That doesn't look like my signature, but

25 I'm sure I signed it.

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1 Q. Okay. 2 A. Because I did the application, or in -- I 3 worked with Western Arkansas Planning and Development 4 to do the application. 5 Q. And on page one does that say GIF 6 Infrastructure Grant Application -- 7 A. Yes. 8 Q. -- Cover Page? 9 A. Yes. 10 Q. Okay. And is that the application that Main 11 Street Ozark made -- 12 A. Yes. 13 Q. -- or Ozark made? Who -- 14 A. Well, Western Arkansas Planning and Development 15 actually submitted the grant application for the 16 city. 17 Q. Okay. 18 A. But we facilitated the grant. 19 Q. When you say "we" are you talking about -- 20 A. Main Street Ozark. 21 Q. Okay. 22 A. They probably gave them all of the information. 23 Did I -- that's signed as the contact person? 24 Q. Let me hand it back to you. 25 A. Well, wherever the signature is. Yes, okay. I	1 A. I think about \$80,000, but I don't see that, 2 that. It's somewhere in that neighborhood, I 3 believe. 4 Q. And then it shows that the city was going to 5 contribute \$319,000 -- 6 A. Yes. 7 Q. -- to the project? 8 A. Yes. 9 Q. Do you know if any of that money has been 10 spent? 11 A. No. None of that has been spent. It's still 12 in the city account with the other \$80,000 or 13 whatever is left. 14 Q. Where is that account kept? 15 A. City of Ozark. 16 Q. But it's in a bank; right? 17 A. Yes. 18 Q. Which bank? 19 A. Probably the Bank of Ozark. 20 Q. Do you have check writing privileges on that 21 account? 22 A. No. 23 Q. Do you know who does? 24 A. The city clerk and the mayor. 25 Q. Do you know the last time any money has been
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1 am laughing at the signature because it looks better 2 than -- I guess my writing keeps deteriorating. 3 Q. That's all right. If you'll -- I've got an 4 extra copy. You can look at the one that's Exhibit 5 21. The date of the cover page and the date you 6 signed it, February 22, 2008? 7 A. Yes. 8 Q. And it looks like y'all were applying for a 9 grant from GIF of \$200,000? 10 A. Yes. 11 Q. And was that grant approved -- 12 A. Yes. 13 Q. -- and the city got the money? 14 A. Yes. 15 Q. Where is the money kept? 16 A. The city. 17 Q. Has any of the grant money been spent? 18 A. Yes. 19 Q. On what? 20 A. I guess you'd have to ask the mayor. I mean, 21 I -- we spent money on all of those drawings that you 22 saw, survey work. We did engineering, topo, things 23 you'll have to get for, from Terry Burruss. 24 Q. Do you know how much of the grant money from 25 GIF is left?	1 spent out of that account? 2 A. Probably -- I'm guessing it was spent from, to 3 Christopher. 4 Q. To pay his legal fees? 5 A. I assume so. 6 Q. Okay. You are -- let me back up. The Main 7 Street Ozark web page was from 2012, I believe, is 8 the most current one, and that shows 12 people on the 9 board of directors. Do you see that? 10 A. This is not the correct board of directors, 11 but, yes, I see that. 12 Q. Would that have been the correct board of 13 directors for the year 2012? 14 A. Yes. 15 Q. And it says Steve Outlaw was the president? 16 A. Yes. 17 Q. And who are the two ex-officio members at that 18 time? 19 A. Linda Millsap, and the mayor was an ex-officio, 20 but he didn't attend the meetings. 21 Q. Who was the mayor? 22 A. Vernon McDaniel -- now wait a minute. Was it 23 Carrol still? 24 Q. In 2012? 25 A. Okay. Yes, she was the mayor, and she was the

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Page 89 1 treasurer in 2012. 2 Q. And who was the other ex-officio member? 3 A. Linda Millsap. 4 Q. And what was her position? What put her as 5 ex-officio member? 6 A. Chamber of Commerce director. 7 Q. Who is the current president of Main Street 8 Ozark? 9 A. Christopher Brockett. 10 Q. And when did he take that position? 11 A. This year, January 1st. 12 Q. Of 2015? 13 A. Yes. 14 Q. What role does the president of Main Street 15 Ozark play? What are his or her duties? 16 A. Well, the president is over the board of 17 directors. He conducts the meetings. He can set the 18 agenda. He supports -- he attends meetings, and he 19 is a spokesperson and representative for Main Street 20 Ozark. 21 Q. When you said sets the agenda, what does that 22 mean? 23 A. I said he can set the agenda. 24 Q. Okay. What is the agenda? 25 A. Well, it depends on what we have going on. We	Page 91 1 A. Well, it would be the cantilevered boardwalk on 2 the drawing here that I showed you. 3 Q. Well, that was jutting out into the river; 4 right? 5 A. No, the cantilevered were -- you want me to get 6 it? 7 Q. Sure. But be careful of your microphone. 8 A. We've never changed the plan. We just try to 9 work with what we can do with the Corps of Engineers 10 and the railroad, but this is -- if we get across the 11 track, we'll have a -- 12 Q. Will you hold that up, please? 13 A. Getting across the track we would put a 14 transient boat dock and work off of that toward a 15 boardwalk, but -- 16 Q. Okay. I think I may understand now. The, the 17 boat dock -- hold that up, please, if you would, to 18 the camera. The boat dock is not shown on that? 19 A. No. 20 Q. Okay. The boardwalk, would you point to that 21 please. 22 A. That would be this. 23 Q. All right. And that would be part of the 24 walking trail? 25 A. Well, yes.
Page 90 1 do a lot of downtown redevelopment. Last month we 2 had to do, elect officers and that kind of thing. It 3 was all organizational things. 4 Q. Last month being January? 5 A. Yes. We approved our work plans for our 6 different committees, and each committee has a 7 different agenda. 8 Q. Even though it may not have been submitted to 9 the Corps of Engineers is there a current plan for 10 the transient boat dock and the hiking/walking trail? 11 A. Well, you have a plan for the walking trail. 12 Q. So that stayed the same? 13 A. Yes. It changed -- I mean, the reason we 14 started developing boardwalks is because a lot of our 15 walking trail plan was underwater. So we had to 16 account for that, and we just -- we have a boardwalk. 17 We have a transient dock, and a park. 18 Q. The, the plan for the walking trail, is that 19 the 1997 booklet that we made an exhibit? 20 A. Yes. 21 Q. And that's still the plan today? 22 A. That's still the plan where we can do it. In 23 the areas that are underwater we want to do a 24 boardwalk. 25 Q. Tell me about that.	Page 92 1 Q. Because as the walking trail is drawn it would 2 actually go out into the river, part of the land 3 that's been flooded? 4 A. Yes. 5 Q. How long, in terms of feet, is the boardwalk? 6 A. I think it was 160 feet, and I think you have 7 the drawing that will show you the exact -- there 8 were several platforms that were, I believe, 60 feet 9 long. It seems like there were ten. You can't tell 10 from this. 11 Q. What's the current plan for the transient boat 12 dock? 13 A. We've applied for a grant for a transient boat 14 dock and, through the Arkansas River Connection, as I 15 told you earlier, and we are waiting to hear the 16 results of that. 17 Q. Have you submitted what the boat dock is 18 supposed to look like if it's granted? 19 A. That would be something that was submitted by 20 the Arkansas River Connection. They have a model for 21 the, for the docks, because they're going to place 22 ten docks along the river. 23 Q. Do you have a copy of that plan, or diagram, or 24 pictures? 25 A. I have the pictures of it that I gave you. I

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Page 93 1 think they're in your stack. 2 Q. You know, I know that we looked at those before 3 your deposition began, but I don't know that we ever 4 marked those, and I don't think we did. 5 Mr. Brockett is shaking his head no, and I 6 remember you showed those to me right before we 7 began. Will you take a look at your documents? 8 A. I'm pretty sure that -- 9 Q. No, I'm pretty sure we haven't marked those. 10 MR. BROCKETT: We haven't marked 11 those. 12 A. No, I mean, I think you have them, though, in 13 that stack somewhere. Oh, here they are. Sorry. 14 Q. That's quite all right. We're up to number 70, 15 so -- 16 A. And this is an example of the docks that they 17 are wanting to build, and depending on the size -- 18 Q. Just one second. You've got two pieces of 19 paper with three photographs each; is that right? 20 A. Yes. 21 MR. TUCKER: I'm going to mark one of 22 them Exhibit 70 and one Exhibit 71. 23 (Exhibit Nos. 70 and 71 were marked.) 24 BY MR. TUCKER: 25 Q. And if you'll hold those up to the camera, and	Page 95 1 possibly a water taxi, to go back and forth to the 2 marina, bring campers over. 3 Q. The marina hasn't been built yet; has it? 4 A. No. 5 Q. Do you know if there are plans to build it any 6 time soon? 7 A. Well, we are still working with the Corps of 8 Engineers. We were supposed to submit the final 9 packet this week, but we have some more things that 10 we have to add to the business plan, and then we'll 11 submit it. 12 Q. Is the marina on the south side of the river 13 going to be constructed regardless of whether or not 14 the boat dock on the north side of the river is going 15 to be constructed? 16 A. It will, yes. 17 Q. The walking trail that you mentioned, do you 18 know how close that gets to the Union Pacific tracks 19 once the trail begins on the south side of the 20 tracks? 21 A. Well, it -- if you're going -- depending on the 22 direction, I mean. You have that little drawing that 23 shows the land that we have. It takes it out of the 24 railroad right-of-way. 25 It will be completely out of the railroad
Page 94 1 then why don't you tell me what they are. 2 A. (Witness complies.) 3 Q. You can set them -- you can put them down and 4 go ahead and -- 5 A. Well there's a, just a ramp -- if you're 6 wanting to know how it would relate to the crossing, 7 you would cross the crossing and go out, straight out 8 onto a ramp, and then it ramps down to the dock. 9 Q. Okay. Let me take a look at those. How many 10 boat slips are -- 11 A. Well, they're not boat slips. 12 Q. You're right. There aren't. I take it boats 13 would have to, for lack of a better word, parallel 14 park up against the dock? 15 A. You see the -- I think they tie onto those 16 posts, and also they can come around on the inside 17 and tie on. 18 Q. Do you know how many boats that dock would 19 accommodate? 20 A. No, I don't. It would depend on the size of 21 the boat. But it's a transient dock, so they're 22 going to be coming and going. It's not a permanent 23 thing. 24 And the dock we applied for is 60 feet. 25 You have 60 feet -- a 60-foot dock on this side,	Page 96 1 right away. I don't know how far. In that one area 2 it won't be very far out, but you have like a large, 3 a wider right-of-way in that area, so you're not near 4 the tracks. 5 Q. When you say "you have a wider right-of-way," 6 who are you referring to? 7 A. Union Pacific. Sorry. 8 Q. Do you know what the Union Pacific right-of-way 9 is? 10 A. You have a 50-foot right-of-way. 11 Q. On both sides of the tracks? 12 A. Yes. 13 Q. The marina on the south side of the river, is 14 there expected that there is going to be a 15 convenience store over there? 16 A. Yes. 17 Q. And do you know who is going to run that? 18 A. Justin Gentry. His family owns the Spadra 19 Marina. 20 Q. And, and who is going to put up the marina on 21 the south side of the river? 22 A. Regina Olson and Justin Gentry. That's her 23 brother. 24 Q. Are they Ozark residents? 25 A. Regina is the adult education coordinator of

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Page 97 1 ATU here in Ozark. And she owns land here, and 2 they're planning on moving here. Her brother is 3 going to live here for sure. 4 Q. Where does he live now? 5 A. They live in Clarksville. 6 Q. The boat dock photographs that you have shown 7 me in Exhibit 70 and 71, will they have fueling 8 facilities on them? 9 A. No. There will be lighting, and that's the 10 only thing that we asked for. 11 Q. And who did you say it was again that has 12 submitted the proposal for the grant to ten different 13 areas: what's the name of the organization? 14 A. Arkansas River Connection. 15 Q. And who do they submit it to? 16 A. Fish and -- U.S. Fish and Wildlife. The 17 coordinator is Tom Jones with the Arkansas Health 18 Department. He is the head of marine sanitation, and 19 he is administer of this grant, so he would be the 20 one that could tell you all about it. 21 Q. Where is he located? 22 A. In Little Rock. 23 Q. Is he with the U.S. Fish and Wildlife Service? 24 A. No. He's with Arkansas Department of Health. 25 Q. Is it your understanding that the grant will	Page 99 1 did a -- they do an inspection, and I was on the 2 inspection barge with him, and he was quite excited 3 about this project. 4 Q. When we deposed Mayor McNutt earlier today he 5 said that he had spoken to Colonel Paul recently, and 6 Colonel Paul said that Ozark wasn't going to be 7 allowed to put anything in the water. I think those 8 were his words, or something close to that. 9 A. I seriously doubt that. 10 Q. And why is that? 11 A. I just don't think that that's true. I talked 12 to Colonel Paul. He's, he's in favor of the docks. 13 Q. Does the Main Street Ozark president have input 14 into the plans for the boat docks, and the walking 15 trail, and the marina? 16 A. That can have input. 17 Q. But so far has Mr. Brockett had input into 18 those? 19 A. Well, no, he has only been here for, our 20 president for a month in -- 21 Q. How often does Main Street Ozark meet? 22 A. Monthly. 23 Q. And I -- you said there's a board of directors. 24 They're not just regular members of Main Street 25 Ozark: are they?
Page 98 1 either be approved in total or rejected in total, or 2 could some of the projects at different locations be 3 approved and some be disapproved? 4 A. I have no idea. 5 Q. Okay. The grant would just give you the money 6 to build the transient boat dock; is that right? 7 A. Yes. 8 Q. You would still have to get permission form the 9 Corps of Engineers to put it in the location -- 10 A. Yes. 11 Q. -- where you wanted to? 12 A. Yes. The Corps of Engineers is on the Arkansas 13 River Connection board, though, and my understanding 14 is that they are in favor of these docks, at least 15 the present colonel. 16 Q. And who is that? 17 A. Colonel Paul. 18 Q. Have you been in contact with Colonel Paul? 19 A. Yes. 20 Q. How recently? 21 A. I was on the boat with him. I had lunch with 22 him when the Mississippi, when they came down to 23 inspect the river. Was that August? I can't 24 remember. Maybe July. 25 It was in the summer, last summer. They	Page 100 1 A. No. 2 Q. Okay. Tell me what the responsibilities of the 3 board of directors are. You started telling me about 4 committees, and I think we got off on something else. 5 What does the board do? 6 A. Well, they make decisions about projects that 7 we are planning to pursue. We do fundraisers. We do 8 the Old Fashion Square Gathering. They just make 9 decisions for the organization. 10 Q. And what are the responsibilities of the 11 president? 12 A. The, the same as any other board president. He 13 presides over the board meetings. He -- I guess I 14 report to him. 15 Q. Are those meetings open to the public? 16 A. Yes. 17 Q. Where are the meetings held? 18 A. Right now we're holding them at the Southern 19 Grill. 20 Q. That's a restaurant here in town? 21 A. Yes. 22 Q. Are there minutes from the meetings kept? 23 A. Yes. 24 Q. And who keeps those minutes? 25 A. Missy Moore, our secretary. She works for the

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1 Bank of the Ozarks. 2 Q. Is there audio from the meetings -- 3 A. No. 4 Q. -- like I know there is from the city council. 5 A. No. 6 Q. So they're not taped? 7 A. No. 8 Q. And you said the president sets the agenda, and 9 I take it the president runs the meetings? 10 A. Yes. He, he approves the agenda. 11 Q. Have there been recent discussions in the Main 12 Street Ozark meetings about the lawsuit that's going 13 on? 14 A. There is nothing -- I don't think so, I mean, 15 other than we want our crossing back. 16 Q. Well, are y'all still having ongoing 17 discussions about plans for the boat dock, or the 18 walking trails, or the marina? 19 A. Well, we talk about it, yes. 20 Q. And Main Street Ozark has ongoing 21 communications with the Corps of Engineers; is that 22 right? 23 A. Yes. 24 Q. Is there current position, We're not going to 25 look at the boat dock until and unless Ozark gets	1 brought to the city. They passed a resolution and 2 told us to pursue it, so we're the ones. 3 Q. Do you recall a video that was produced by Main 4 Street Ozark and published on YouTube? 5 A. Yes. 6 Q. I believe you were -- 7 A. The star. 8 Q. Okay. How did that come to be? 9 A. I don't exactly know what you mean. 10 Q. Well, was that your idea? 11 A. That was part of our social media campaign. 12 Q. Was that your idea? 13 A. It was -- actually, a local filmmaker that was 14 doing some work for us volunteered to shoot it for 15 us, so we did it. I can't tell you -- it may have 16 been my idea. I'm not sure. 17 Q. Okay. Now you -- you're familiar with that 18 video; is that right? 19 A. Yes. 20 Q. And have you seen a transcript of the video? 21 A. No. No. 22 Q. I'm going -- well, we actually marked a 23 transcript as an exhibit. 24 A. Did you want this back? 25 Q. Yes, ma'am.
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1 access across Union Pacific tracks? 2 A. Yes. 3 Q. Did Main Street Ozark propose this lawsuit 4 against Union Pacific to the city council? 5 A. No. 6 Q. Who made the proposal to the city council that 7 they vote to file a lawsuit against Union Pacific? 8 A. I don't really know who made the actual 9 proposal. I know that Main Street Ozark did not want 10 to file a lawsuit. 11 We had spent several thousand dollars to do 12 public relations, and we had a little contest going 13 to give away an iPad to like our page. We wanted to 14 do a social media campaign and try to win the 15 railroad over, but I feel that we were forced into 16 the lawsuit. 17 Q. Main Street Ozark is not part of the city 18 council? 19 A. No. 20 Q. And doesn't speak for the city council? 21 A. No. 22 Q. It's not a subset of the city; it's an 23 independent organization? 24 A. We contract with the city to do economic 25 development downtown. This was a project that we	1 A. The grant? 2 Q. Yeah, thank you. And, by the way, the original 3 grant application of February 22, 2008, was that for 4 the, what I'm going to call the big marina on the 5 north side, the 7200 square foot marina? 6 A. I don't -- it wasn't to pay, to do the marina, 7 no. It was a riverfront development. 8 Q. Since that time the development on the north 9 side has gotten scaled down considerably; is that 10 right? 11 A. No. I wouldn't say that. The development on 12 the north side? 13 Q. Yes, ma'am. 14 A. No. It hasn't been scaled down. We actually 15 added a park to it. 16 Q. But at least that drawing on the blow-up 17 board -- 18 A. Okay. The marina moved to the south side of 19 the marina, and the pier is gone, but we still plan 20 on doing a boardwalk at some point. 21 Right now we just need a crossing so that 22 we can put a dock out there and open our downtown up 23 to river traffic. 24 Q. And if, if the crossing goes back in, will it 25 be open to pedestrians and vehicles or just

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1 pedestrians? 2 A. It would only be pedestrian, other than we 3 would have to have service vehicles to be able to 4 cross and maintain. 5 Q. Has there been any type of study about how many 6 pedestrians a day would use that crossing? 7 A. No. There's been no study, not regarding 8 pedestrians. 9 Q. Do you know if there has been any hazard 10 assessment or risk analysis if the crossing goes back 11 in? 12 A. Not to my knowledge. There was -- there were 13 never any accidents there when you could drive across 14 it, and people lived down there. 15 Q. Number 23, that was the exhibit -- where it 16 says "female," there's a narrator and a male and a 17 female; right? 18 A. Yes. 19 Q. And you are the female? 20 A. Yes. 21 Q. Okay. Let me hand you Exhibit Number 23 and 22 ask you to turn to paragraph two. And hold on just a 23 second. I want to get my own copy of that out. 24 First of all, let's go back to page one, if 25 you would. Do you see where the narrator starts,	1 A. Well, the marina still -- the marina is right 2 there. They just get in the boat and go across the 3 river. There's not -- 4 Q. I guess what I'm -- the point I'm trying to 5 make is the University of Arkansas did the study, did 6 you say in 2007? 7 A. Yes. 8 Q. And there were a set of plans that were 9 submitted to the university so that it could study 10 the economic impact? 11 A. And we submitted probably that drawing over 12 there, the first one with the -- we explained to them 13 about the dock and, I mean, the pier, I think. 14 Q. But even though there's going to be a marina 15 now on the south side of the crossing or, sorry, the 16 south side of the river, there's not going to be a 17 pier sticking out into the river? 18 A. No. 19 Q. And there's not going to be a restaurant over 20 there; is there? 21 A. I mean, there will be restaurants in our 22 downtown. We're still planning on doing the -- we're 23 still planning on doing the river market, which is 24 not -- which is on the -- 25 Q. Why don't you show that to the --
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1 close to the bottom and says, A study by the 2 University of Arkansas -- 3 A. Yes. 4 Q. -- projected that 187.8 jobs would be created 5 with the current economic development plan? 6 A. Yes. 7 Q. Which development plan was that? 8 A. That was actually the study that we received 9 from the University of Arkansas that's, that we 10 would, would, that projected the 187 jobs. 11 Q. And what year was that study performed? 12 A. 2007. 13 Q. Okay. And, and the plans have changed since 14 2007; have they not? 15 A. Not -- no. Not that would -- not that would 16 affect the job number, because we still have a marina 17 in the plan. The only thing that's affecting it is 18 not being able to get off the river into town. 19 Q. But what the University of Arkansas studied in 20 2007 is not the same thing as what is proposed now 21 with if the crossing went back in? 22 A. It was for a marina and access to downtown. 23 What are you referring to? 24 Q. Well, the marina was going to be on the north 25 side of the river.	1 A. The river market is where the restaurants and 2 everything will be. Wiederkehr, Al Wiederkehr told 3 us that he would like to have a presence in that 4 river market, possibly wine tasting or a restaurant 5 or something like that. 6 There is not anything written in stone 7 about who is going to do it, but who wouldn't want to 8 do it? 9 Q. Here's what I'm trying to understand. What 10 you're showing us right now was the original idea for 11 the marina and the river development on the north 12 side of the river. 13 A. That was the orig- -- well, after the walking 14 trail then this. 15 Q. Right. 16 A. Yes. 17 Q. And that's what -- when the University of 18 Arkansas did this study, they were looking at that 19 drawing right there, or those plans? 20 A. I think so. 21 Q. Okay. And those plans have now changed? 22 A. They have changed, but they have not been 23 reduced. We still have the same river market 24 restaurants, the whole thing, because that is on 25 River Street. That is not on the south side of the

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Page 109 1 tracks. 2 Nothing has changed in -- in our mind, 3 nothing's changed on the River Street, on River 4 Street. 5 The marina is still there. It's larger, as 6 a matter of fact. This was just like a 30 boat slip 7 marina that we gave to the University of Arkansas. 8 They came back with a study and told us 9 that we could support up to 110 boat slips, so we 10 went with that. And that's going to be across the 11 river. The boats can still have access to downtown 12 if we have the dock. 13 Q. Okay. 14 A. So nothing's changed economically. 15 Q. Go to page two with me of that transcript from 16 the YouTube video. 17 A. Okay. 18 Q. Do you see where it says narrator one up from 19 the bottom? And about midway it says. According to 20 the Federal Railroad Administration Office of Safety 21 Analysis this year alone between the months of 22 January and March Union Pacific had 101 total 23 accidents. 24 A. I don't see it. 25 Q. Do you see "Narrator"?	Page 111 1 So trains moving fast around curves is a 2 huge risk factor. And we have three risk factors in 3 a row, so we're concerned about derailment. We feel 4 that trains are going too fast, and being in a 5 valley, it would take forever for any type of 6 chemical spill in the air to dissipate? 7 A. Yes. 8 Q. And that's what you said as part of the YouTube 9 video? 10 A. Yes. 11 Q. And you are concerned about trains derailing; 12 is that right? 13 A. Yes. 14 Q. You understand that anytime a train applies its 15 emergency brakes to try to slow or stop as quick as 16 it can there is a risk that the train will derail? 17 A. Yes. 18 Q. And do you understand that when a train is in a 19 curve and applies its emergency brakes that the risk 20 of derailment increase over and above being on a 21 straight track? 22 A. Yes. 23 Q. And if a pedestrian were walking across the 24 proposed crossing at this Oliver Street location, and 25 an engineer thought he might hit that pedestrian,
Page 110 1 A. Okay, 101 total accidents. Yeah, I see that. 2 Q. And they're talking about derailments there; 3 right? 4 A. Yes. 5 Q. It goes on to say. This adds more concern to 6 area residents because Union Pacific carries 7 extremely dangerous chemicals, including sulfuric 8 acid, liquified petroleum gasses. I can't -- can you 9 pronounce the next chemical? 10 A. No. 11 Q. I can't either. I'll spell it. D-a-l-u-i-n-e, 12 second word, delyalcyanade, sodium hydroxide, 13 paraformaldehyde, and chlorine. Do you see that? 14 A. Yes. 15 Q. It says, All of which are toxic and even deadly 16 if a spill were to occur due to a derailment? 17 A. Yes. 18 Q. Who is the narrator in this YouTube video? 19 A. This was Matt Ferrell, our videographer. 20 Q. The, the next person who speaks, it says 21 "Female," and that would be you; is that right? 22 A. Yes. 23 Q. And it says -- these are your words -- we have 24 a railroad bridge, which is a risk factor. We have a 25 spur, which is a risk factor, and we have a curve.	Page 112 1 that he would apply the train's emergency brakes? 2 A. Yes. 3 Q. And if he did so, that increases the risk for a 4 derailment of whatever that train is carrying? 5 A. I can see that. 6 Q. And we just went over the hazardous materials, 7 the chemicals that trains carry through Ozark; right? 8 A. (Witness nods head.) 9 Q. If, if a train derailed, and one of those tank 10 cars were punctured and went into the Arkansas River, 11 is it fair to say that that could cause severe 12 environmental damage? 13 A. I would say so. 14 Q. And, as you mentioned, if there was a chemical 15 spill, it would, as you said, it would take forever 16 because being in a valley. 17 Well, let me just read it. And being in a 18 valley, it would take forever for any type of 19 chemical spill in the air to dissipate? 20 A. That's what the fire chief told me. 21 Q. And, and you believe that? 22 A. He said we were in a valley, and he had always 23 been concerned that if there were ever a spill, then 24 it would be, it would just be hanging here in the 25 air.

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1 Q. The vapors would?

2 A. Yes.

3 Q. And that is a safety concern, if the, if the

4 crossing were to be reinstalled?

5 A. If the trains would slow down, then we wouldn't

6 have such a huge risk factor.

7 Q. But, if the crossing goes in, that's going to

8 be a safety concern of --

9 A. Well, the crossing was there for 100 years, and

10 we never had an accident, and there were no -- you

11 could drive across it. Traffic went by there daily,

12 so they, they had no problems stopping at a slower

13 speed.

14 Q. Well, trains are going to go maximum authorized

15 speed. Do you understand that?

16 A. I may -- I might understand it, but I don't

17 like it.

18 Q. Okay.

19 A. Not through my, not through our downtown. We

20 have a jail down there with prisoners in it that --

21 how would we get that evacuated if there were a spill

22 from a fast moving train?

23 Q. But, but derailments at this location and

24 possible chemical spills are a serious concern of

25 yours?

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1 A. They are now because I heard about all of the

2 chemicals in the meeting that we were in in Little

3 Rock that you attended.

4 Q. And --

5 A. And they gave a list longer than that.

6 Q. And if the crossing is re-installed, that

7 affords more opportunities for a train and a

8 pedestrian to come together and have an accident?

9 A. At 70 miles an hour, yes.

10 Q. And if they do have an accident, that increases

11 the risk of a train derailling?

12 A. Yes.

13 Q. And, and of having a chemical spill?

14 A. Yes.

15 Q. Okay.

16 A. But you'd have a bridge, which is, like I said

17 in the video, a bridge, a spur, and a -- is it a

18 spur, or a switch, whatever?

19 Q. You can call it a siding.

20 A. Okay. You have that issue. You have three in

21 a row with the curve. And now they say they can go

22 70 miles an hour, and they're going to go faster.

23 So I think that -- whether we get the

24 crossing back or not, the trains need to slow down,

25 because they're putting our community at risk.

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1 Q. Well, and if we have people going back and

2 forth across this proposed crossing, that's going to

3 put those people at risk: is it not?

4 A. If the trains are not going so fast it won't

5 put them as much at risk as they are now. People go

6 across the tracks now to take pictures of the bridge

7 and everything else.

8 Q. Well, if they're doing that, they're

9 trespassing; aren't they?

10 A. Yes. But they could still be hit by a train.

11 Q. Sure they could, but what the proposed crossing

12 would do is make it easier and, in fact, legal for

13 people to go across the crossing as often as they

14 wanted to.

15 A. You understand that we want to put a safe

16 crossing with lighting and lights and whatever. It

17 would be much safer -- I would think it would be

18 safer with what we want to do than the way it is now.

19 Q. But back to my question.

20 A. Okay.

21 Q. If the proposed crossing goes in, that's going

22 to make it legal for people to walk across the

23 tracks?

24 A. Like it was for 150 years.

25 Q. Ms. Key, that wasn't my question.

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1 A. I'm sorry. I'm sorry.

2 Q. That's all right. If the proposed crossing

3 goes in, that will make it illegal -- sorry. Strike

4 that.

5 If the proposed crossing goes in, that will

6 make it legal for pedestrians to cross the tracks

7 going from both the city side to the river side and

8 the river side to the city side?

9 A. Yes, pedestrians.

10 Q. Pedestrians, right. Whereas now it's illegal

11 for them to do that?

12 A. Yes.

13 Q. Okay. And if the crossing goes in, do you -- I

14 may have asked you this -- pardon me -- do you have

15 any idea about how many pedestrians a day might use

16 that crossing?

17 A. I have no way to know that at this point.

18 Q. Nobody has done any study of that?

19 A. No.

20 Q. Presumably it would be higher usage in the

21 summer months if people use the dock rather than the

22 winter months?

23 A. Yes.

24 Q. And if, if the crossing goes in, you would

25 anticipate more pedestrians would use that crossing

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1 than now across the tracks illegally? 2 A. I would, I would hope so. 3 Q. But even in that instance pedestrians, more and 4 more pedestrians going across the crossing means 5 there is more and more risk for a train hitting a 6 pedestrian? 7 A. Well, yes. 8 Q. Okay. When did you first become aware that the 9 railroad had taken the crossing out and did not 10 intend to put it back? 11 A. I, I called Charlie Felkins, and I don't really 12 know -- I mean, I didn't write anything down then. I 13 didn't know there was a problem. I just assumed the 14 railroad was working on the tracks -- 15 Q. Yes, ma'am. 16 A. -- and it was just going on and on and on. And 17 one day I drove by there, and it was gone. So I 18 thought, well, I wonder when they are going to put it 19 back. 20 So I -- I didn't call him right away 21 because I never dreamed that they weren't going to 22 put it back. We had it in all of our plans. 23 And I called Charlie Felkins and asked him 24 about it, and he said, oh, you know, he told me that 25 story about the train whistle, and they took it out	1 Q. Would that be because it has to be an ADA 2 compliant -- 3 A. Well, yes. 4 Q. Do you know why it would cost that much? 5 A. Well, we would have to have elevators. And 6 then when we go -- how, how would we do an overpass 7 in that area? 8 MR. BROCKETT: Sandy, you don't get to 9 ask questions. 10 A. I'm sorry. 11 Q. That's okay. I mean, I mean -- 12 MR. BROCKETT: That's one of the few 13 perks we get. 14 Q. I'm not an engineer, but I know Mr. -- is it 15 Mr. Ruck? 16 A. Yes. 17 Q. I mean, had drawn up some plans at one point 18 for a pedestrian overpass? 19 A. That would be Mr. Burruss. 20 Q. Mr. Burruss? 21 A. Yes. 22 Q. I'm sorry. And so when you -- 23 A. Well, the pedestrian overpass that we had 24 planned was on the west end by the old jail. And we 25 had some problems with that, so we bought some
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1 because the train was making too much notice and this 2 man was upset. I thought, okay. 3 Q. Did he tell you that the mayor had asked him -- 4 A. No. 5 Q. -- to take the crossing out? 6 A. I don't think so. Not that he asked him. He 7 said the guy called the mayor and that -- I know that 8 he had conversations with the mayor, but I don't 9 specifically remember him saying the mayor told him 10 to take it out. By that time I think the mayor was 11 in prison. 12 Q. That would be Mr. Timmerman? 13 A. Yes. 14 Q. Well, he wasn't in prison in 2001 when the 15 crossing was taken out; was he? 16 A. No. 17 Q. Do you know when he went to prison? 18 A. Was it '03? 19 Q. I don't know. 20 A. Okay. I can't remember. 21 Q. Does -- has the city looked into any further 22 the possibility of a pedestrian overpass bridge? 23 A. From what we have found, it's going to be 24 two million dollars or something. I mean, we don't 25 have the money for an overpass.	1 property on the other side of the old jail. 2 And we were going to put the pedestrian 3 overpass here half over onto the cantilevered dock. 4 Well, as you can see, we are a long way from getting 5 the cantilevered dock, so where are we going to 6 put -- we don't know where we're going to put this 7 pedestrian overpass. 8 You know, if we put it in the Oliver Street 9 area, if we had the money to put it there, we would 10 still -- I'm trying not to ask questions -- we would 11 still have to have service vehicle access across the 12 track. 13 Q. How come? 14 A. Well, you are going to go across the track to 15 get to the walking trail, and to the park, and to the 16 dock. 17 Mainly the people coming in off the river 18 would use the crossing, whether it's an overpass or a 19 grade crossing. 20 Q. Would the -- if the -- I take it once you found 21 out about the cost for the pedestrian overpass that 22 idea was scrapped? 23 A. No, it's not scrapped. It's just on the back 24 burner. We have -- we, we need our downtown to be 25 opened up to the river.

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1 We need to get the river traffic in town. 2 That's going to bring businesses into town to 3 accommodate the traffic. 4 When the -- and when the marina goes in 5 with the gas, you know, they cannot get gasoline 6 between Clarksville and Van Buren, so we don't have 7 the river traffic that we would have if we had the 8 marina there. 9 Q. Could you put the pedestrian overpass in west 10 of the jail? 11 A. If we put it in west of the jail we would have 12 to have the boardwalk for it to go out on. We would 13 be happy to do that, but how -- we have to get to it. 14 We'd have to be able to still service it. 15 Q. And so what you're saying is you would still 16 have to have an at-grade crossing for service 17 vehicles to go across? 18 A. Yes. 19 Q. Except for the times that the service vehicles 20 had to use the crossing could you have some type of 21 gate, locked gate across the crossing so people 22 couldn't just walk across it? 23 A. Sure. We proposed putting a locking gate on 24 there right from the beginning. We were going to 25 move the crossing to where they recommended it would	1 the Arkansas Highway Department. 2 So we had \$650,000. We had to spend the 3 grant from the highway department because it was for 4 this project, and we ran out of time because we 5 couldn't get across the tracks. So we took that 6 grant money and built the plaza that's there on River 7 Street now. 8 Q. I thought you told me that the -- okay. I take 9 that back. 10 A. You're -- we couldn't get our crossing back, so 11 we couldn't use the money, and there was a time limit 12 on that grant. And the highway department allowed us 13 to transfer it over across the street to the plaza. 14 Q. How much was the highway department grant? 15 A. 130,000, and we matched it 120 -- I mean, 16 26,000. So all together it was close to 160,000 that 17 we had to add to our other riverfront development 18 money. And now we have the plaza almost finished. 19 Q. Where is it located? 20 A. Across the street from the depot. Well, across 21 from Oliver Street, in the post office area. 22 Q. But, but the \$319,000 that we saw in the grant 23 application, that, that has not been spent? 24 A. That's in the bank. 25 Q. And then did you say you had \$80,000 left?
Page 122	Page 124
1 be better, put locking gates on it, and that's what 2 we were going to do. But they turned it -- 3 Q. And only the service vehicles could go through? 4 A. I'm trying to remember. Well, it would be an 5 interim crossing for pedestrians as well, until we 6 could get an overhead crossing. 7 Q. Do you know how much an overhead crossing would 8 cost if it's going to be west of the jail? 9 A. It would be a, it would be an enormous price 10 because we have to build a boardwalk for the crossing 11 to go out on. There's a bluff there. It would have 12 to come down on something. It couldn't -- 13 Q. I guess here's what I'm trying to get at. 14 Could Ozark put an overhead crossing or over 15 pedestrian bridge, whatever you want to call it, 16 overhead -- 17 A. Uh-huh. 18 Q. -- could it still do that and only have an 19 at-grade crossing used by service vehicles? 20 A. If we had the money we could do it. 21 Q. Do you have anywhere close to the money? 22 A. No. We had six -- let's see. I had three 23 different grants. 24 We had the 320 from the city, 200 from the 25 grant that you had here, and we also got a grant from	1 A. You would have to ask the city. 2 Q. - Approximately? 3 A. It's somewhere around \$80,000, maybe a little 4 less. 5 Q. Is the least expensive pedestrian overpass you 6 could build two million dollars? 7 A. Well, I don't know. That two million dollar 8 figure kind of came out of the air, I think, from one 9 of our architects, and it was a few years ago. So I 10 guess it would depend on how it was designed and -- 11 Q. But is that still something to consider, or is 12 it cost prohibited? 13 A. It would -- if we could have a dock, if we 14 could have something to go, to go across the railroad 15 track on to some type of a platform dock or 16 something, that would be awesome. We would love 17 that, but we don't have the money for that, anywhere 18 near the money. 19 Q. Do you know how long it would take to get the 20 money for that? 21 A. It depends on how long it takes you to write a 22 check. I don't know. I don't know, but, I would -- 23 you know, we would have to do all, a bunch more 24 engineering, and that would be expensive. 25 Q. If you had, if you had things any, any way that

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1 you wanted them, would it be the pedestrian overpass,
 2 if money weren't an object?
 3 **A. If money weren't an object, we would probably**
 4 **build this -- well, of course, it would have to be a**
 5 **combination of this and the cantilevered because the**
 6 **Corps is not going to let that much be in the water,**
 7 **but I think they would let us have the floating dock.**
 8 **I mean, we could move our transient dock down there**
 9 **possibly.**
 10 Q. But as far as access to the south side of the
 11 railroad tracks, if money weren't an object, would
 12 you want the pedestrian overpass?
 13 **A. Well, we've always wanted it, yes.**
 14 Q. Okay. One of the things you want is people to
 15 moor their boats on the transient dock and then come
 16 into Ozark?
 17 **A. Eat barbecue.**
 18 Q. Right.
 19 **A. Antiquing.**
 20 Q. And you're aware that people who boat
 21 especially in the summertime may be drinking alcohol?
 22 **A. Well, we're pretty sure they do, yeah.**
 23 Q. Okay. And if the crossing goes in, they would
 24 have to walk across that crossing?
 25 **A. Well, they're not supposed to be drinking**

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1 **alcohol in those boats.**
 2 Q. Well, when they come into Ozark, though, if
 3 they, if they go to restaurants, you've also got
 4 liquor licenses and clubs here; correct?
 5 **A. Yes.**
 6 Q. And the people who walk into town from their
 7 boats can eat and consume alcohol here and then walk
 8 back to their boats?
 9 **A. Yes.**
 10 Q. Have you considered that as, as any type of
 11 risk factor about people who are impaired or
 12 inebriated walking across the crossing while a train
 13 is coming?
 14 **A. I haven't thought about it at all. I'm sure**
 15 **people drank before when the crossing was open and**
 16 **drove back and forth and walked back and forth.**
 17 Q. Is there any type of plan about guarding
 18 against people who become impaired and try to cross
 19 the railroad tracks if the crossing were to go back
 20 in?
 21 **A. Well, the sheriff's department is right there**
 22 **across the street from it. I would assume -- and the**
 23 **city police department patrol.**
 24 Q. Let me change subjects with you. Could the
 25 boat dock be put on Gar Creek to where people

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1 wouldn't have to cross the railroad tracks?
 2 **A. No, because you can't get under the railroad**
 3 **bridge with your boat.**
 4 Q. Well, now a bass boat can get under it?
 5 **A. Well you can get --**
 6 Q. And a ski boat can get under it?
 7 **A. I've gotten under in. We have a Bayliner, or**
 8 **had a Bayliner, but we would have to go all of the**
 9 **way over to the edge and bend down to get under --**
 10 **the city has a pipe going across there, and then the**
 11 **railroad bridge. So you couldn't get the types of**
 12 **boats under there at all that we're trying to**
 13 **attract.**
 14 Q. What types of boats are those?
 15 **A. Yachts, Little Rock Yacht Club, a lot of the**
 16 **yachters and people with the larger boats want to**
 17 **come here.**
 18 Q. How is it you know that?
 19 **A. Well, I'm a member of the Arkansas River**
 20 **Connection, and all of those people have yachts. In**
 21 **fact, they're bringing six or seven down pretty soon.**
 22 **And what they do is more out in the middle**
 23 **of the, of the river, and bring those little**
 24 **dinghies, but they can't get across the track.**
 25 Q. Let me -- I'm going to refer to what you call

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1 Oliver, Oliver Street just as Oliver Street.
 2 **A. Okay.**
 3 Q. Are you aware of any written documentation
 4 showing that Oliver Street was ever dedicated as a
 5 city street?
 6 **A. No. But I read the Arkansas Municipal League**
 7 **definition of a street.**
 8 Q. Are you aware of any written documentation that
 9 shows that a crossing at the location of Oliver
 10 Street was ever dedicated as a city crossing?
 11 **A. No, but many other streets have not been as**
 12 **well.**
 13 Q. Are you aware of any written documentation that
 14 shows that any, any crossing in the City of Ozark was
 15 ever dedicated as a city crossing?
 16 **A. Ask that again. Am I --**
 17 Q. Are you aware of any written documentation
 18 showing that any crossing in the City of Ozark was
 19 ever dedicated as a city crossing?
 20 **A. We're talking about a, a railroad crossing?**
 21 Q. Yes, ma'am.
 22 **A. I, I'm not.**
 23 Q. Are you aware of any recorded plat purporting
 24 to dedicate Oliver Street for public use?
 25 **A. I'm not aware of any, any plat.**

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1 Q. Are you aware of any ordinance accepting a 2 recorded plat dedicating Oliver Street to a public 3 use? 4 A. I'm not aware, no. 5 Q. Or any plat purporting to dedicate the Oliver 6 Street crossing for a public use? 7 A. No. 8 Q. Or any ordinance accepting a recorded plat 9 dedicating the Oliver Street crossing to a public 10 use? 11 A. No. I think the crossing has been there too 12 long to have been dedicated. They didn't do that 13 back in those days. 14 Q. You're not aware of any record, are you, of the 15 city condemning Oliver Street for a public use? 16 A. Condemning it? 17 Q. Yes, ma'am. 18 A. No. 19 Q. And to your knowledge the city has never 20 initiated condemnation proceedings for the purpose of 21 establishing a right-of-way for an Oliver Street 22 crossing? 23 A. I'm not sure what, what you mean. I'm not 24 aware of the city being involved in anything other 25 than servicing the homes that were down there and the	1 Q. -- from time to time, and that Union Pacific 2 uses the side track for one train to pull in and 3 another train to go around it? 4 A. Yes. They, they did that before they took the 5 crossing out as well. 6 Q. Do you see that with some frequency? 7 A. Do I see cars down there? 8 Q. Yes. 9 A. More than I would like, yes. But they've -- 10 they've always done that, but they broke the cars 11 apart. 12 Q. But now that there's no crossing they don't 13 have to break the cars apart? 14 A. That's right. 15 Q. Okay. Mayor McNutt said that Mr. Brockett, to 16 bring this lawsuit, had been paid approximately 17 \$20,000; is that right? 18 A. That's what I think. I had -- I don't write 19 the checks, but. 20 Q. Who does? 21 A. The city. 22 Q. Okay. And the money that came to, that was 23 paid to Mr. Brockett, did that come out of the grant 24 that the city received? 25 A. That's my understanding, yes.
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1 pallet plant. 2 Q. And you're not aware of the city ever bringing 3 condemnation proceedings to establish a right-of-way 4 for an Oliver Street crossing; are you? 5 A. I'm not aware, no. 6 Q. You're not aware of any recorded easement or 7 other written instrument granting the city the right 8 to cross Union Pacific's right-of-way; are you? 9 A. I don't think so. I know that we have some 10 deeds for -- I think it's the Bell Street crossing. 11 Q. Can you point to any city funds that were used 12 for the purpose of maintaining Oliver Street since 13 1975? 14 A. I can't. I wasn't involved at that time. 15 Q. Or at any time after that? 16 A. No, I'm not aware. 17 Q. Do you know who built Oliver Street? 18 A. I do not. 19 Q. And as you said, at least on the south side of 20 the tracks it was dirt. On the north side it was 21 gravel and dirt? 22 A. That's my recollection. 23 Q. You understand Union Pacific uses the side 24 track to store equipment on -- 25 A. Yes.	1 Q. Do you know if that was a permissible use of 2 the funds from that grant? 3 A. I know that the mayor asked about it, and she 4 was told that -- now this is what she told me, that 5 she was told that the main -- it was for the purpose, 6 the same purpose that we wrote the grant for, and 7 that the main thing to do is get the money spent, 8 because we need to get it out of there, get it out of 9 the account and get it spent. And I guess you'll be 10 talking to her tomorrow. 11 Q. What, what -- what grant money, or who was the 12 grantor that contributed the money that was used to 13 pay Mr. Brockett? 14 A. Who was the grantor? 15 Q. Yes, ma'am. 16 A. That was the grant that you showed me earlier. 17 Q. Okay. That was that GIF? 18 A. Yes. 19 Q. The \$200,000? 20 A. Yes. 21 Q. Okay. 22 A. Hiring Mr. Brockett was -- we couldn't use the 23 money if we didn't get across the track. That was 24 the whole point, so she said that it was okay. 25 Q. That would be Ms. Sneath?

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Page 133 1 A. No, who -- she talked to Western Arkansas 2 Planning and Development, I believe. 3 Q. Ms. Sneath talked to someone at -- 4 A. Yes. 5 Q. -- Western Arkansas Planning and Development? 6 A. Yes. 7 Q. Do you know who she talked to? 8 A. I, I'm not sure. I think it was the head, 9 Sasha Grist, I think. 10 Q. Mr. McNutt this morning testified that he spoke 11 to someone with the legislature or legislative 12 committee who told him that spending that grant money 13 on attorneys was not a legal use of the funds. Were 14 you aware of that? 15 A. He told me that, yes. 16 Q. Mr. McNutt did? 17 A. Yes. 18 Q. When did he tell you that? 19 A. A couple of weeks ago. 20 Q. What was your reaction to that? 21 A. My reaction was it depends on how you ask the 22 question. 23 Q. Did he tell you who he talked to? 24 A. Yes. Morris Jenkins with ADC. 25 Q. And is it your understanding that if this	Page 135 1 BY MR. TUCKER: 2 Q. Ms. Key, if the at-grade crossing goes back in 3 east of the depot at what you call Oliver Street, do 4 you know what type of traffic control devices will be 5 installed there? 6 A. Whatever the railroad wants. 7 Q. Is the city going to pay for the traffic 8 control devices, be it flashing lights, or lights and 9 gates, or anything like that? 10 A. We have no plans to do that. We are asking 11 that the crossing be put back as it was. 12 Q. Have you seen any plans for the, the approaches 13 to the crossing itself? 14 A. No. We're assuming it will be back the way it 15 was. 16 Q. So you don't know if the grade of the approach 17 would affect the risk at the crossing; would you? 18 A. I have no idea. It's -- there's not much of a 19 grade there. 20 Q. You said that if the crossing goes back at 21 Oliver Street the only vehicles that would use it 22 would be service vehicles for the park and for the 23 boat dock? 24 A. Yes. 25 Q. Do you know how often they would use the
Page 134 1 Mr. Jenkins or whatever legislative committee is 2 finds out how the money was spent that the City of 3 Ozark may have to repay that money? 4 A. No. I mean, that's not my understanding. I 5 don't think that -- I mean, I suppose that's 6 possible, but if -- 7 Q. Is that what Mr. McNutt told you? 8 A. Mr. McNutt told me that Mr. Jenkins told him 9 that you couldn't use grant money to pay legal fees. 10 That's what he told me. 11 Q. Is it true that now Mr. Brockett is not going 12 to be owed anything more than \$20,000? 13 A. That's my understanding. 14 Q. But, I believe, has -- well, let me ask you 15 this. Has he taken a contingency in what damages 16 might be received by the city in this lawsuit if the 17 city prevails? 18 A. You will have to ask him that. 19 MR. TUCKER: Okay. Excuse me. Let's 20 go off the record for five minutes. 21 THE VIDEOGRAPHER: We are going off 22 the record. It's 5:00 p.m. 23 (Short break) 24 THE VIDEOGRAPHER: We are back on the 25 record. It's 5:08 p.m.	Page 136 1 crossing? 2 A. I imagine only if there was a problem where 3 they would have to be mowing or something over there. 4 It would be a seasonal things there. The docks are 5 fairly maintenance free, other than the lighting. 6 There may have to be light bulbs. 7 Q. Let me hand you what I will mark for 8 identification as Exhibit Number 71 (sic). It's 9 entitled Press Release, and it comes from Main Street 10 Ozark. It's a two-page document. I believe your 11 name is at the end of it. Do you see that? 12 A. (Witness reviews document.) Yes. 13 COURT REPORTER: That one is 76? 14 MR. TUCKER: No. That one is 70, and 15 this is 71. That's going to be 72. May I 16 see that back? I will mark that as 72. 17 (Exhibit No. 72 was marked.) 18 MR. TUCKER: There we go. I'm sorry. 19 I apologize. 20 BY MR. TUCKER: 21 Q. Is your name on the bottom of that press 22 release? 23 A. Yes. 24 Q. Do you see the paragraph just to the right of 25 the exhibit sticker that says, Given the high

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Page 137 1 incidence? 2 A. Yes. 3 Q. Will you read that paragraph for me? 4 A. Given the high incidence of train derailments 5 and the topographical location of Ozark we reject 6 railroad -- I can't tell what that word is after 7 "railroad." 8 Q. Would it be attempts? 9 A. Attempt to lull the city into a false sense of 10 security. Ozark is located in a protected valley 11 which according to local safety officials would 12 seriously inhibit the dissipation of toxic substances 13 in the air should a derailment occur, basically what 14 I said on the video. 15 Q. Okay. Derailment at this location is a serious 16 safety concern of yours; true? 17 A. Regarding the speed of the trains, yes. 18 Q. Well, regardless of how fast or slow the trains 19 go, a derailment at this location is a serious safety 20 concern of yours? 21 A. Yes, it is. 22 Q. Okay. Is it your understanding that the City 23 of Ozark owns the old railroad depot? 24 A. Yes. 25 Q. And it's a museum now; is that right?	Page 139 1 heightened potential. 2 Q. But if the trains maintain their current speeds 3 the potential for an accident at that crossing goes 4 up; right? 5 A. Well, yes. 6 Q. And there's also potential for environmental 7 damage to the river and the environment surrounding 8 the river if a crossing goes in? 9 A. If the trains don't slow down. 10 Q. Then yes; right? 11 A. Okay. 12 Q. Is that correct? 13 A. Yes. 14 Q. And there's also the potential if the crossing 15 goes in for injury or loss of life to the railroad 16 employees on the train? 17 A. Yes. 18 Q. Okay. Ms. Sneath, have you understood the 19 questions that I've asked you here? 20 A. Ms. Key. 21 Q. I'm sorry. I apologize. It's late in the day. 22 Let me strike that. 23 A. Yes, I think I did. 24 Q. Let me strike that. Ms. Key, have you 25 understood the questions I've asked you here?
Page 138 1 A. Yes. 2 Q. Did Union Pacific sell the depot to the city? 3 A. They donated the depot. 4 Q. For nothing or a very small amount? 5 A. No, it was nothing. 6 Q. And the land that the depot sits on? 7 A. Yes. 8 Q. Do you know if that was, had anything to do 9 with taking the crossing out? Were those two 10 connected in any way? 11 A. No. 12 Q. You don't know, or they were not? 13 A. They were not. 14 Q. Just a couple more questions concerning the 15 subject of derailments. Ms. Key, do you agree if 16 there was a derailment at the crossing location where 17 Ozark wants a crossing to go in there is a potential 18 for injury or loss of life of an Ozark citizen? 19 A. Do I agree that there is a potential? 20 Q. Yes. 21 A. There's a potential now. 22 Q. And if the crossing goes in there will be a 23 heightened potential; won't there? 24 A. If the trains don't slow down. If the trains 25 slow down, I think that there will not be a	Page 140 1 A. Yes. 2 Q. Have I given you a fair and a full opportunity 3 to answer those questions? 4 A. Yes. 5 Q. Is there anything that you would like to say 6 before I stop asking you questions? 7 A. Just that we feel that the train should slow 8 down. I mean, they rattle the windows in the depot. 9 They -- they, they are just going too fast. And I 10 wasn't that concerned about it until after the 11 meeting in Little Rock and I heard about all of the 12 chemicals. I didn't realize how, how frequently they 13 were hauling chemicals -- 14 Q. Do you understand -- 15 A. -- at those high rates of speed. They told 16 me -- that's the first meeting I learned that they 17 could go 79 miles an hour. 18 Q. They don't go that fast through Ozark 19 currently; do they? 20 A. I -- as -- you know, I don't know. I don't go 21 down there and watch the trains, but some of them are 22 going pretty fast. 23 Q. You understand that train speeds are set by the 24 Federal Railroad Administration? 25 A. I do now.

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1 Q. You're just asking Union Pacific to voluntarily 2 reduce the speed as it goes through Ozark? 3 A. Yes. 4 Q. All right. Anything else you would like to 5 add, Ms. Key? 6 A. That's it. 7 MR. TUCKER: I pass the witness. 8 MR. BROCKETT: No questions. 9 THE VIDEOGRAPHER: This concludes the 10 deposition. We are off the record at 11 5:14 p.m. 12 (The deposition was concluded at 5:14 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25	1 ERRATA SHEET 2 If there are any corrections to your 3 deposition, indicate them on this sheet of paper, 4 giving the change, page number, line number, and 5 reason for the change. 6 The reasons for making changes are: 7 (1) To clarify the record; 8 (2) To conform to the facts; or 9 (3) To correct major transcription errors. 10 Page number ____ Line Number ____ Reason for change ____ 11 Change ____ to ____ 12 Page number ____ Line Number ____ Reason for change ____ 13 Change ____ to ____ 14 Page number ____ Line Number ____ Reason for change ____ 15 Change ____ to ____ 16 Page number ____ Line Number ____ Reason for change ____ 17 Change ____ to ____ 18 Page number ____ Line Number ____ Reason for change ____ 19 Change ____ to ____ 20 Page number ____ Line Number ____ Reason for change ____ 21 Change ____ to ____ 22 Page number ____ Line Number ____ Reason for change ____ 23 Change ____ to ____ 24 25
Page 142 1 WITNESS' SIGNATURE 2 3 I, SANDRA KEY, hereby certify that I have 4 thoroughly read the transcript of my deposition taken 5 on the 11th day of February, 2015, and that said 6 transcript and corrections, if any, that appear on 7 the attached errata sheet, are a true and accurate 8 accounting of my testimony given on that day. 9 10 WITNESS 11 12 DATE 13 14 ***** 15 16 STATE OF) 17)ss. 18 COUNTY OF) 19 SUBSCRIBED AND SWORN TO before me, a Notary 20 Public in and for the aforesaid county and state on 21 this, the ____ day of _____, 2015. 22 23 Notary Public 24 25 My Commission Expires:	Page 144 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(e) of the Rules 14 of Civil Procedure, review of the transcript was 15 requested by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither counsel 17 for, related to, nor employed by any of the parties 18 to the action in which this proceeding was taken; 19 and, further that I am not a relative or employee of 20 any attorney or counsel employed by the parties 21 hereto, not financially interested or otherwise, in 22 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 JANESE FERGUSON SMITH, CCR, RPR 27 Notary Public for Saline County 28 and Court Reporter.

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Janess Ferguson Smith
 Bushman Court Reporting

501-372-5115