

Transcript of the Testimony of

Carol Sneath

Date: February 12, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

Fax: (501) 378-0077

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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 ORAL DEPOSITION OF CAROL SNEATH February 12, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	1 I N D E X 2 3 EXAMINATION 4 By Mr. Tucker 5 5 EXAMINATION 6 By Mr. Brockett. 134 7 EXAMINATION 8 By Mr. Tucker 101 9 10 E X H I B I T S 11 12 Exhibit No. 73 (Sneath Notice) 13 13 Exhibit No. 74 (Road Crossing Application) ... 38 14 Exhibit No. 75 (12-1-08 Letter) 40 15 Exhibit No. 76 (10-1-09 Letter) 42 16 Exhibit No. 77 (7-18-11 Letter) 44 17 Exhibit No. 78 (9-9-12 Letter) 46 18 Exhibit No. 79 (10-23-12 Letter) 47 19 Exhibit No. 80 (2-11-13 Letter) 50 20 Exhibit No. 81 (6-30-11 Letter) 73 21 Exhibit No. 82 (8-25-05 Letter) 78 22 Exhibit No. 83 (Resolution No. 2013-2) 81 23 Exhibit No. 84 (4-10-13 Letter) 83 24 Exhibit No. 85 (9-26-12 Letter) 95 25
Page 2 1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER D. BROCKETT, ESQ. 5 Sayre & Brockett 6 401 West Commercial Street 7 Ozark, Arkansas 72949 8 ON BEHALF OF THE DEFENDANTS: 9 SCOTT H. TUCKER, ESQ. 10 Friday, Eldredge & Clark 11 400 West Capitol 12 Suite 2000 13 Little Rock, Arkansas 72201 14 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF CAROL SNEATH, a 2 witness produced at the request of the Defendants, 3 was taken in the above-styled and numbered cause on 4 the 12th 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 9:00 a.m. 9 10 ***** 11 12 S T I P U L A T I O N S 13 It is stipulated and agreed by and between 14 the parties through their respective counsel that the 15 deposition of CAROL SNEATH may be taken for any and 16 all purposes according to the Federal Rules of Civil 17 Procedure. 18 ***** 19 20 21 22 23 24 25

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Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Page 5 1 CAROL SNEATH. 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 MR. BROCKETT: I just want to do the 8 same stipulations, agreement by the 9 parties, all objections are reserved except 10 as to the form of the question. 11 MR. TUCKER: And responsiveness of the 12 answer. 13 MR. BROCKETT: Absolutely. 14 MR. TUCKER: Okay. 15 BY MR. TUCKER: 16 Q. Will you please state your name, ma'am? 17 A. Carol Sneath. 18 Q. Ms. Sneath, my name is Scott Tucker. I am an 19 attorney for Union Pacific Railroad in a case styled 20 City of Ozark versus Union Pacific Railroad Company, 21 and I'm here to take your deposition today because 22 you've been named as a possible witness in the 23 lawsuit. 24 A. Uh-huh. 25 Q. Do you understand that?	Page 7 1 let me finish asking the question, even if you 2 already know what the answer is, and I'll do my best 3 to let you finish your answer before asking you 4 another question; all right? 5 A. Yes. 6 Q. You understand that you've been placed under 7 oath today to tell the truth and the whole truth -- 8 A. Yes. 9 Q. -- just as if you were in front of a judge and 10 a jury in a courthouse? 11 A. Yes. 12 Q. Ms. Sneath, let me have an agreement with you. 13 If you don't hear one of my questions will you please 14 ask me to repeat it? 15 A. Sure will. 16 Q. And if you don't understand one of my questions 17 for any reason will you please stop me and ask me to 18 rephrase it? 19 A. Yes. 20 Q. Because we will be relying upon the answers 21 that you give here today in preparation for the trial 22 of this case, and if you answer a question without 23 asking me to repeat it or rephrase it, I'm going to 24 take it that you heard the question and that you 25 understood the question. Is that fair?
Page 6 1 A. Yes. 2 Q. All right. Have you ever given a deposition 3 before? 4 A. No. 5 Q. Have you ever testified in a trial before? 6 A. No. 7 Q. Been a party to a lawsuit? 8 A. No. 9 Q. All right. Well, let me go over just a few 10 ground rules with you, and your attorney may have 11 covered most of these. 12 The court reporter is taking down 13 everything we say, so she can't take down nods of the 14 head. If you answer one of my questions, and you nod 15 your head up and down, I am going to have to ask you 16 if that's a yes. 17 And try to stay away from "uh-huh" and 18 "huh-uh" because sometimes that's hard for the court 19 reporter to understand exactly which one you meant. 20 So if you say "uh-huh" I may ask you if that's a yes, 21 and I'm not trying to be rude. 22 As I mentioned our court reporter is taking 23 down everything we say, but she can't get things down 24 if both of us talk at the same time. 25 So, if you would, please do your best to	Page 8 1 A. Yes. 2 Q. Okay. Good. You caught yourself then; didn't 3 you? 4 A. (Witness nods head.) 5 Q. All right. Are you on any medications today 6 that would affect your ability to give truthful and 7 accurate answers to the questions that you will be 8 asked? 9 A. No. 10 Q. Ms. Sneath, if at any time during the 11 deposition you realize that earlier you gave an 12 incorrect answer to one of my questions, will you 13 please stop me at that point and say, Earlier you 14 asked me such and such, and my answer was incorrect, 15 and correct that on the record? 16 A. Yes. 17 Q. All right. Even if it's something that may 18 seem insignificant, we need to have as accurate of 19 record as we can get. 20 A. (Witness nods head.) 21 Q. This today is not, we will be going for a 22 while, but it's not an endurance contest. If you 23 want to take a break for any reason, need to make a 24 phone call, stretch your legs, whatever, just say, 25 Let's take a short break, and we'll do that.

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1 A. Yes. 2 Q. Do you have any questions that you need to ask 3 me about this process before we get going? 4 A. Not at this time. 5 Q. Okay. Ms. Sneath, what is your date of birth, 6 please? 7 A. 10-3-47. 8 Q. How old does that make you? 9 A. Sixty-seven. 10 Q. Where were you born? 11 A. Appleton -- no, I'm sorry, Stockbridge, 12 Wisconsin. 13 Q. And where did you grow up? 14 A. Stockbridge, Wisconsin. 15 Q. And where did you go to high school? 16 A. Stockbridge. 17 Q. What year did you graduate? 18 A. 1965. 19 Q. Did you go to college? 20 A. No. 21 Q. Do you have any formal education beyond high 22 school? 23 A. Yes. 24 Q. What is that? 25 A. Some associate's degree.	1 Q. Next question, what made you go to Pine Bluff, 2 Arkansas? 3 A. What made us go to Pine Bluff, Arkansas? It 4 was a business venture that my husband had. 5 Q. All right. How long did you live at the house 6 on River Street? Are you still there? 7 A. Yes. It's been 22 years now. 8 Q. Would that -- let's see, would your house be 9 east or west of the depot? 10 A. West. 11 Q. Ms. Sneath, are you currently employed? 12 A. No. 13 Q. What was your last employment? 14 A. I was Mayor of Ozark. 15 Q. What year did you become Mayor of Ozark? 16 A. 2011. 17 Q. And you served until? 18 A. 2000 -- the end of 2014. 19 Q. That's a paid position? 20 A. Yes. 21 Q. And how much does it pay each year? 22 A. The last year was 46,000. 23 Q. Okay. Were you employed before you became 24 Mayor of Ozark? 25 A. I was city clerk.
Page 10	Page 12
1 Q. Did you say some associate's degree? 2 A. Yes, in secretarial. 3 Q. Where was it that you got your associate's? 4 A. Appleton, Wisconsin. 5 Q. Was that a two-year program? 6 A. Yes. 7 Q. Okay. What year did you get that degree? 8 A. I do not remember. 9 Q. Do you recall what your degree was in? I think 10 you may have said. 11 A. Secretarial. 12 Q. All right. When did you move to Ozark, 13 Arkansas? 14 A. 1992. 15 Q. And where did you move to? What was your 16 residence? 17 A. Oh, 905 West River Street. 18 Q. Would that be in sight of the depot and where 19 the crossing used to be located? 20 A. No. 21 Q. What was it that brought you to Ozark, 22 Arkansas? 23 A. The beauty, just a nice place to live. 24 Q. Where had you lived before you came to Ozark? 25 A. Pine Bluff, Arkansas.	1 Q. When did you first become city clerk? 2 A. 1994. 3 Q. Were you city clerk from 1994 until 2011 when 4 you -- 5 A. Yes. 6 Q. -- became Mayor? 7 A. Yes. 8 Q. All right. Were you employed anywhere before 9 city clerk? 10 A. I was at Butterball. 11 Q. In what capacity? 12 A. One of the grunts in the factory. 13 Q. Okay. Are you married? 14 A. No. 15 Q. Are you divorced? 16 A. No. 17 Q. Is your husband deceased? 18 A. Yes. 19 Q. Did he work anywhere in Ozark when he was still 20 alive? 21 A. No. 22 Q. Was he disabled? 23 A. He -- yes. 24 Q. Okay. 25 A. You could say that.

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1 Q. Have you ever served in the military? 2 A. Have I? 3 Q. Yes, ma'am. 4 A. No. 5 Q. Ms. Sneath, we had sent to Plaintiff's counsel, 6 Mr. Brockett, a Notice for your deposition, which I'm 7 going to mark as Exhibit Number 73 and ask you if you 8 have seen this? 9 (Exhibit No. 73 was marked.) 10 A. (Witness reviews document.) Yes. 11 Q. All right. And the Notice directs you to be 12 here for your deposition at nine a.m. on 13 February 12th, 2015, at the law office of Sayre and 14 Brockett. And you were here on time, so you complied 15 with that part of the Notice. If you will, turn to 16 the next to the last page with me. 17 A. (Witness complies.) 18 Q. Do you see at the bottom of the page it says 19 "Document Demand"? 20 A. Uh-huh. 21 Q. I am sorry. Is that a "yes"? 22 A. Yes. 23 Q. Okay. And then on the next page there are a 24 few others. Let's look at these and see if you have 25 anything that would have, that would fall under these	1 have sent or received regarding the removal or 2 installation of a crossing in Ozark, Arkansas. Would 3 you have any items that would fall under that 4 category? 5 A. No. 6 Q. Number four, Please produce any diaries, notes 7 or calendars that you have kept or created regarding 8 any efforts to seek a crossing in Ozark, Arkansas. 9 Do you have any items that would fall under 10 paragraph four? 11 A. No. 12 Q. Number five, Please produce any diaries, notes 13 or calendars you have kept or created regarding any 14 contact with UP or its representatives. 15 Would you have any of those items? 16 A. No. 17 Q. Number six, Please produce all diaries, notes, 18 or calendars you have from any council meeting 19 regarding the removal or installation of a crossing 20 in Ozark, Arkansas. 21 Would you have any items that would fall 22 under paragraph six? 23 A. No. 24 Q. Ms. Sneath, did you bring any documents, 25 papers, anything with you here today for your
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1 categories; okay? 2 A. Okay. 3 Q. I'll read paragraph one if you'll read along 4 with me, it says, Please produce a copy of all 5 documents, correspondence, email, reports that you 6 have sent or received from Union Pacific Railroad 7 Company or any representative of UP regarding the 8 removal or installation of a crossing in Ozark, 9 Arkansas. 10 Do you see that? 11 A. Yes. 12 Q. Do you have any documents or items that would 13 fall under that -- 14 A. No. 15 Q. -- paragraph? 16 A. No. 17 Q. Let's look at number two. It says, Please 18 produce a copy of all documents, correspondence, 19 email, reports that you have sent or received from 20 Union Pacific Railroad Company or any representative 21 of UP regarding access to city property. Do you have 22 anything that would fall under that? 23 A. No. 24 Q. Number three, Please produce a copy of all 25 documents, correspondence, email, reports that you	1 deposition? 2 A. No. 3 Q. At one point you had, I take it, a number of 4 letters, documents, things of that nature pertaining 5 to the crossing in Ozark that was removed. I know I 6 have seen letters sent to you and authored by you. 7 Did those stay with the mayor's office? 8 A. Yes, they did. 9 Q. Okay. So the current mayor is T.R. McNutt? 10 A. Yes. 11 Q. And he would have possession, or his office 12 would? 13 A. Yes. 14 Q. Of all of those items that you kept in the -- I 15 presume you kept a file on the crossing that was 16 removed and the road and -- am I right about that? 17 A. Yes. 18 Q. And all of that stayed with -- 19 A. It all stayed at City Hall. 20 Q. Okay. Let me ask you to look at two 21 photographs that were marked in an earlier deposition 22 as Exhibits 18 and 19. They depict a street sign 23 that says Oliver Street. Do you see that? 24 A. Yes. 25 Q. And that street sign was -- what's the road in

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1 front of the post office called? 2 A. That's River Street. 3 Q. That's the street you live on? 4 A. Yes. 5 Q. So the Oliver Street sign would have been 6 posted just across the street from the post office? 7 A. Yes. 8 Q. When was that sign erected? 9 A. Probably somewhere about two years ago. 10 Q. Since we're in February of 2015, maybe the 11 early part of 2013? 12 A. Probably. 13 Q. Who paid for the sign? 14 A. Actually, it was 911. 15 Q. Who requested that the sign be installed? 16 A. I did. 17 Q. And why? 18 A. Because there were folks that did not know 19 exactly where the, the entrance was, including 20 representatives of the railroad. 21 Q. Of course, at that time point in 2013 there was 22 no longer a road there; was there? 23 A. No. UP had taken that out. 24 Q. And there was no longer a crossing there? 25 A. UP had taken that out.	1 A. I think so. It was around election time. I 2 know that. 3 Q. Who took it down? 4 A. We do not know. 5 Q. Was the sign taken down and laid on the ground? 6 I think I have seen it there. 7 A. The first time it was just taken out -- 8 Q. And placed -- 9 A. -- and gone. 10 Q. Oh, and gone completely? 11 A. Right. 12 Q. Do you know who did that? 13 A. No. 14 Q. Was the Oliver Street sign later put back up? 15 A. Yes. 16 Q. In the same location? 17 A. Yes. 18 Q. At your request? 19 A. Yes. 20 Q. And when did that second time, when did the 21 sign go up? 22 A. I'm going to say, to the best of my 23 recollection, it was probably November or December. 24 Q. Of 2014? 25 A. Yes.
Page 18	Page 20
1 Q. So what was the purpose of putting an Oliver 2 Street sign across River Street from the post office? 3 A. To show where we felt that the crossing was 4 before it was taken out. 5 Q. And did you say 911 paid for it? 6 A. The system is that when we have the street sign 7 that needs to be replaced that we call 911, and they 8 replace it. 9 Q. Is that a local 911 here in Ozark? 10 A. Yes. 11 Q. Do you know when the street sign was taken 12 down? 13 A. Which time? 14 Q. I didn't know if it had been taken down more 15 than once. After you put it up in early 2013 when's 16 the first time it was taken down? 17 A. Probably about, I'm going to say, eight months 18 ago. 19 Q. All right. Since we're in February 2015 what 20 would that be, August 2014? 21 A. Yes. 22 Q. No, that would just be -- that would be six 23 months ago. June of 2014, does that sound right? 24 A. No. It was probably later than that then. 25 Q. Maybe August 2014?	1 Q. Is the sign still up today? 2 A. I haven't been down there lately, so I do not 3 know. 4 Q. Did you tell me you first came to Ozark in 5 1992? 6 A. Yes. 7 Q. And you had caused the Oliver Street sign to 8 first be installed in early 2013? 9 A. Yes. 10 Q. Before you had the Oliver Street crossing -- 11 strike that. Before you had the Oliver Street sign 12 installed in early 2013, did you ever see a street 13 sign in that location? 14 A. Not to my recollection. 15 Q. So from 1992 until early 2013 there was no 16 street sign at this location? 17 A. No. 18 Q. All right. When you came to Ozark in 1992 up 19 until early 2013 did you call that former road 20 anything? 21 A. Yes. 22 Q. What did you call it? 23 A. The road leading over to the river. 24 Q. When did you first begin to call it Oliver 25 Street?

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1 A. I do not recall. 2 Q. Whatever the road leading across the tracks to 3 the river was, did you believe that was a public 4 street? 5 A. Yes. 6 Q. And when did you first come to that belief? 7 A. I guess during the, through -- when I first 8 came to Ozark. 9 Q. Well, when you first came to Ozark the road had 10 been taken out and didn't lead anywhere? 11 A. No. I came in '92. 12 Q. Pardon me. Okay. Was there still a road in 13 1992? 14 A. Yes. 15 Q. And still a crossing? 16 A. Yes. 17 Q. But by this point the Corps of Engineers had 18 flooded the Ozark pool and brought the water up? 19 A. That's correct. 20 Q. So did the road lead anywhere to except to, 21 what, some propane tanks? 22 A. Yes. 23 Q. Am I correct in that? 24 A. Yes. 25 Q. But it had no street sign or anything?	1 investigation on it. 2 Q. Approximately when was that? 3 A. I do not recall at this time. 4 Q. It would have been after the crossing was 5 removed in 2001; is that right? 6 A. Ask that question again in full. 7 Q. Yes, ma'am. When you started doing 8 investigation about the road and the crossing, that 9 would have been after the crossing was taken out in 10 2001? 11 A. No. I think it would have been more at the 12 time that we were looking at the development over 13 there. 14 Q. Okay. Did you ever drive down that road and 15 over the tracks before the crossing was taken out? 16 A. I didn't drive down that road, but I walked 17 down that. 18 Q. Okay. Very many times? 19 A. Not a lot, but I did. 20 Q. Approximately how many? 21 A. Approximately a half a dozen. 22 Q. What was the purpose for walking down the road? 23 A. To see what was on the other side. 24 Q. Okay. Why did the chicken cross the road? 25 A. Yeah.
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1 A. No. 2 Q. On the north side of the railroad tracks was 3 the road dirt and gravel? 4 A. On the north side of the railroad tracks? 5 Q. Yes, ma'am. 6 A. There was some asphalt there also. 7 Q. Along with dirt and gravel? 8 A. Yes. 9 Q. And then the, the crossing itself, do you know 10 what it was composed of, what the materials were? 11 A. I believe the same thing. 12 Q. Be asphalt -- 13 A. Dirt and gravel, yeah. 14 Q. And then once the road crossed the tracks going 15 south was it just a dirt road at that point? 16 A. Yes. 17 Q. Did you believe that that was a public street 18 when you got to Ozark in 1992, or did you know one 19 way or the other? 20 A. I did not. 21 Q. At some point did you form a belief that it was 22 a public street? 23 A. Yes. 24 Q. And when was that? 25 A. Well, when we started doing all of the, the	1 Q. All right. When you walked from north to south 2 from the town side toward the river side and you 3 would go over the tracks the road turns to the left 4 or to the east? 5 A. To the left, then -- yeah. 6 Q. Okay. And approximately how far did it go 7 before the propane tanks were? 8 A. I do not recall. 9 Q. Do you recall how far to the east the road went 10 before it just stopped? 11 A. No, I don't. 12 Q. Other than you walking down the road, say, a 13 half a dozen times or so, do you know if other 14 members of the public used the road? 15 A. I'm sure they did. 16 Q. And I understand your feeling about that, but 17 did you see other members of the public use the road? 18 A. I can't say that I did, no. 19 Q. Okay. 20 A. But I do not recall at this time. 21 Q. Of course, the propane company used the road to 22 get to those propane tanks that were stored on Union 23 Pacific's property? 24 A. Yes. 25 Q. As best you know, after the propane tanks were

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1 removed was the use of that road and the crossing 2 sporadic, or can you say one way or the other? 3 A. No, I -- no, I couldn't say. 4 Q. Have you done any research or investigation 5 into the use of the road after the propane tanks were 6 removed? 7 A. I have not. 8 Q. Or before? 9 A. I have not. 10 Q. Do you know if from the time you moved to Ozark 11 in 1992 until the time the crossing was removed if 12 the City of Ozark spent any money to maintain that 13 road or the crossing? 14 A. I can't say specifically, no. 15 Q. Did you ever see any city workers at any time 16 from 1992 until the crossing was taken out working on 17 that road? 18 A. I have not seen them, no. 19 Q. And while you were mayor you never asked any of 20 the city road department people to go down and work 21 on that road? 22 A. No. 23 Q. At some point, and I don't know if it was 24 before the crossing was taken out or after, was there 25 a pile of crossties just on the south side of the	1 crossing or the road or anything? 2 A. Not that I can recall at this time. 3 Q. And outside of the meetings that you have had 4 with Union Pacific representatives, you didn't have a 5 face-to-face, one-on-one meeting with anyone from 6 Union Pacific where this situation was discussed; did 7 you? 8 A. I do not recall at this time. 9 Q. Do you remember when the first meeting was that 10 you had with representatives from UP, or where it 11 took place? 12 A. I believe the first meeting that I was in was 13 down at the UP offices in Little Rock with Charlie 14 Felkins and -- I can't think of his name, but the 15 attorney from UP. 16 Q. Was anyone there with you? 17 A. There was Sandy, myself, and Terry Burruss. 18 Q. And Mr. Burruss would be the -- 19 A. The architect for our projects. 20 Q. And you said you think that took place at the 21 Union Pacific offices in North Little Rock? 22 A. Excuse me. Paul Benham was the attorney. 23 Q. Okay. 24 A. And what was your question again? 25 Q. Yeah, do you believe that first meeting took
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1 tracks in the form of a barricade? Do you recall 2 seeing that? 3 A. No. 4 Q. Okay. So you've told me where River Street is. 5 It runs east and west in front of the post office. 6 Where is Water Street? Is there still a street 7 called Water Street? 8 A. No. 9 Q. Did it get taken out, or did it become renamed 10 something else? 11 A. I'm not familiar with Water Street. 12 Q. Ms. Sneath, have you had any conversations with 13 people at Union Pacific Railroad about the, the road 14 that went over the tracks and about the crossing 15 itself? 16 A. Rephrase that. 17 Q. Have you spoken with people at Union Pacific 18 Railroad about the road that went across Water Street 19 and the crossing? 20 A. We've had meetings. 21 Q. How many meetings have you had? 22 A. To the best of my recollection, I would say 23 that there was at least three, might have been more. 24 Q. But I take it you never got on the telephone 25 with somebody at Union Pacific to talk about the	1 place at the Union Pacific offices in North Little 2 Rock? 3 A. Yes. 4 Q. Do you recall when it was, what year it was? 5 A. No. 6 Q. Can you tell me what was discussed at the 7 meeting? 8 A. Ways that we could get, have access to the, to 9 the river. 10 Q. What did Charlie say? 11 A. I do not recall at this time. 12 Q. Or do you recall what Paul Benham said? 13 A. Just that they were trying to work with us. 14 Q. Okay. When was the next meeting that you had 15 with folks from the railroad? 16 A. I believe it was down in Little Rock again, and 17 that one is the one that Bill Gossage put together. 18 Q. That was held at the state capitol? 19 A. Yes. 20 Q. Do you recall anything in particular that 21 representatives of the railroad said at that meeting? 22 A. I do recall that at, toward the end of the 23 meeting, or the meeting might have, might have ended, 24 and I do remember talking to Chad -- no, I'm sorry, 25 Thad Call.

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1 Q. Okay. 2 A. About an overpass. 3 Q. What was said? 4 A. That he was -- he knew of some funds that were 5 available, and he was going to look into them. 6 Q. Do you remember anything else in particular 7 that railroad representatives said at that meeting or 8 immediately after it? 9 A. We talked about the speeds of the train and the 10 chemicals that they would haul. 11 Q. What was the nature of the conversation with 12 respect to the speeds of the train? 13 A. Just that they had the ability to travel at, I 14 think it was 90, I'm sorry, 79 miles an hour. 15 Q. Do you know what speeds Union Pacific typically 16 travels through the City of Ozark? 17 A. I do not. 18 Q. Do you know what the maximum allowable speed is 19 for freight trains traveling through the City of 20 Ozark? 21 A. I do not. 22 Q. Regardless of what speeds -- strike that. 23 Regardless of the maximum allowable speed or the 24 typical speeds, I believe you advocated that the 25 trains slow down going through Ozark; is that	1 Q. It was before you? 2 A. Oh yes. 3 Q. But I take it you were satisfied with the 45 4 mile an hour ordinance? 5 A. Yes. 6 Q. Did you ever seek to, in any way, to persuade 7 Union Pacific or through drafting an ordinance to 8 have the trains slow down further? 9 A. No. 10 Q. You said -- we talked about the speed of trains 11 and the chemicals they would haul. What was the 12 nature of the conversation with respect to chemicals 13 that were being hauled by Union Pacific through the 14 City of Ozark? 15 A. That was what Thad Call said. 16 Q. He talked about hazardous materials coming 17 through on trains? 18 A. He just -- the only thing is he mentioned the 19 types of material being hauled. 20 Q. All right. Anything else you remember from 21 that meeting at the state capitol that you talked 22 about with Union Pacific or they talked about with 23 you? 24 A. Not that I can recall at this time. 25 Q. And the third meeting would have been what?
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1 correct? 2 A. Can repeat that question, please? 3 Q. Were you in favor of trains slowing down as 4 they go through Ozark? 5 A. Of course. 6 Q. And you told Union Pacific that? 7 A. I told them that? I did not. 8 Q. You don't have any letters or recollection of 9 verbal conversation where you told the railroad you 10 thought that their trains ought to slow down while 11 coming through Ozark? 12 A. The only thing I can remember of ever saying is 13 that there is an ordinance, that there was an 14 ordinance on file for 45 miles an hour. 15 Q. When was that ordinance passed? 16 A. I cannot remember. 17 Q. Was 45 miles an hour, as far as you were 18 concerned, a safe speed for trains to travel through 19 Ozark? 20 A. I'm not an expert of that. 21 Q. Well, the -- 22 A. My opinion is yes. 23 Q. The ordinance passed during your 24 administration; correct? 25 A. No.	1 A. I guess that one would have been in the 2 upstairs conference room of the chamber. 3 Q. Do you remember about when that was? 4 A. No. 5 Q. Sometime after the meeting at the state 6 capitol? 7 A. Yes. 8 Q. Was that in connection with a city council 9 meeting? 10 A. No. 11 Q. Was anybody there on behalf of the City of 12 Ozark, other than yourself? 13 A. Sandy Key. 14 Q. And who was there from the railroad? 15 A. Paul Benham. 16 Q. Anyone else? 17 A. Mike Short was there. Other than that, I 18 cannot remember at this time. 19 Q. Do you recall what was said during that 20 meeting? 21 A. The biggest thing that stuck in my mind is that 22 Thad Call said, Absolutely not. I'm sorry. That was 23 Paul Benham that said, Absolutely not. 24 Q. Absolutely not to what? 25 A. Replacing the street, Oliver Street.

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1 Q. And the crossing? 2 A. Right. 3 Q. Okay. Do you remember anything else from that 4 meeting? 5 A. No. That's the biggest thing that stuck in my 6 mind. There was one other meeting, and that was the 7 meeting with the city council. 8 Q. Do you remember where it would have fit in with 9 the other three meetings, what number it would be? 10 A. It was the last meeting that we had, I do 11 believe. 12 Q. Do you remember when that was? 13 A. No, I can't recall. 14 Q. It's while you were mayor? 15 A. Yes. 16 Q. Do you remember who was there from Union 17 Pacific? 18 A. Other than Thad -- there were several there, 19 but the only one I can remember is Thad Call. 20 Q. What do you recall from the conversations or 21 the statements of the railroad representatives there? 22 A. Just the same issues that we've been discussing 23 all along. 24 Q. Ms. Sneath, tell me again the years that you 25 were city clerk.	1 He later said he meant the crossing. And 2 about the time we requested it to be a quiet zone, 3 then they took the crossarms out. 4 Do you recall during 2000 or 2001 a 5 resident of the City of Ozark asking for the area to 6 be turned into a quiet zone where the crossing was? 7 A. I vaguely remember an issue on that, yes, that 8 Todd was having. 9 Q. Tell me what you remember about that. 10 Ms. Sneath. 11 A. Very little because I was -- as far as that 12 individual goes, I was not involved in that. 13 Q. Do you know who that was that was complaining 14 about trains blowing their horns? 15 A. I can't recall at this time. 16 Q. Do you recall Mayor Timmerman referencing a 17 letter from Union Pacific railroad that they were 18 going to take the crossing out? 19 A. No. 20 Q. Are you telling me it didn't happen, or, I just 21 don't remember it? 22 A. I don't remember it happening. 23 Q. But you do recall some discussion. Was it in a 24 city council meeting about the area where the 25 crossing was becoming a quiet zone?
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1 A. 1994 through 2010. 2 Q. So you would have been city clerk when Todd 3 Timmerman was mayor? 4 A. Yes. 5 Q. And as city clerk would you attend the city 6 council meetings? 7 A. Yes. 8 Q. What years was Mr. Timmerman Mayor of Ozark? 9 A. I believe, to the best of my recollection, he 10 took office in 1999. 11 Q. Until when? 12 A. 2003. 13 Q. Okay. Is it your understanding that the 14 crossing was removed by Union Pacific in 2001? 15 A. Yes. 16 Q. So that would have been while Mr. Timmerman was 17 mayor and during your tenure as city clerk? 18 A. Yes. 19 Q. We looked yesterday at some minutes from a city 20 council meeting in connection with the deposition of 21 Mayor McNutt, and during a city council meeting he 22 said, and I'm quoting from page 18, Todd Timmerman 23 put in a letter to the council down at the other 24 place, and it's a courtesy letter from the railroad 25 saying they were closing that.	1 A. Repeat that question. 2 Q. Do you recall some discussion in the city 3 council meetings during that time about turning the 4 area into a quiet zone? 5 A. No. 6 Q. Now, you said you had a vague recollection of 7 something. What is it that you recall? 8 A. In regard to? 9 Q. The railroad taking the crossing out and the 10 area being turned into a quiet zone? Did you -- 11 A. We -- 12 Q. Did you have any foreknowledge at all that the 13 railroad was going to remove the crossing? 14 A. No. 15 Q. You just woke up one day, and it was gone? 16 A. Yes. 17 Q. And that was in 2001? 18 A. Yes. 19 Q. And do you know what crossbuck signs are? 20 A. Yes. 21 Q. A sign on a post that says railroad crossing in 22 the shape of an "x"? 23 A. Yes. 24 Q. Had those signs been up at the crossing that 25 goes over the tracks?

9 (Pages 33 to 36)

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1 A. I don't recall that they were there, no. 2 Q. When did you first realize that the crossing 3 had been removed? 4 A. I guess when Sandy brought it to my attention. 5 Q. Do you recall when that was? 6 A. No. 7 Q. Would it have been in, sometime in the year 8 2001? 9 A. I do not recall at this time, no. 10 Q. Would it have been more than a year after the 11 crossing was removed, or sometime during that first 12 year? 13 A. I don't recall. 14 Q. What did Sandy say when she brought it to your 15 attention? 16 A. Just that the railroad had taken it out. 17 Q. Did she say anything more than that? 18 A. Not that I can recall at this time. 19 Q. In other words, like the railroad has taken it 20 out, what are we going to do about it, or any 21 comments like that, or just the railroad took out the 22 crossing? 23 A. I do not recall specific conversation at this 24 time. 25 Q. Okay. Were you city clerk when Mr. Coley was	1 A. Yes. 2 Q. It doesn't mention anything in that application 3 form about an Oliver Street, does it? 4 A. (Witness reviews document.) No. 5 Q. And on page two, do you see where it says 6 Desired crossing will be, and then those letters are 7 typed, and also typed is Nearest, and then there is a 8 blank, and someone has typed in, River Street. Do 9 you see that? 10 A. Yes. 11 Q. And then down there at the bottom it says, We 12 are open to moving the crossing further west if this 13 is more desirable to the railroad. The dimensions 14 will be according to UP recommendations. 15 Do you see that? 16 A. I see that. 17 Q. Okay. 18 MR. TUCKER: I've got to find a couple 19 of documents. Let's go ahead and take five 20 minutes now. 21 (Ten-minute break.) 22 BY MR. TUCKER: 23 Q. Do you recall when it was, Ms. Sneath, that the 24 City of Ozark acquired the Union Pacific train depot? 25 A. I can't recall.
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1 the mayor? 2 A. Yes. 3 Q. Did you do any work on an application for the 4 crossing to be reinstalled? 5 A. Be more specific. 6 Q. Okay. I am going to pass to you what I will 7 mark as Exhibit Number 74. 8 (Exhibit No. 74 was marked.) 9 BY MR. TUCKER: 10 Q. And at the top, excuse me, it says this was an 11 exhibit to one of the court pleadings. At the top it 12 says, Road Crossing Application Form, and someone has 13 written by hand in the upper right-hand corner, Sent 14 12-20-04. And the date that Mr. Coley has is 15 12-15-04. 16 Will you take a look at that, Ms. Sneath, 17 and tell me if you recall doing any work on that road 18 crossing application form? 19 A. I did not do any work on this, no. 20 Q. Do you have any knowledge about that 21 application? 22 A. I believe this is something that Sandy handled 23 as Main Street director. 24 Q. Is it signed by Mayor Coley on the second page 25 and dated December 15th, 2004?	1 Q. Do you know if that was in conjunction with 2 Union Pacific taking the crossing out? 3 A. I do not know. 4 Q. Okay. Let me hand you what I'll mark as 5 Exhibit Number 75, which is a letter from Charlie 6 Felkins to a Mr. Andrew Dibble or Dribble, and I 7 don't know which. Do you know which it is? 8 A. Andy Dibble. 9 (Exhibit No. 75 was marked.) 10 BY MR. TUCKER: 11 Q. Okay. And I see that you are a copied 12 recipient of that letter. Do you see Carol Sneath, 13 Clerk, City of Ozark at the bottom? 14 A. Uh-huh. 15 Q. I'm sorry. Is that a "yes"? 16 A. Yes. 17 Q. And Mr. Felkins' letter is dated December 1, 18 2008, at the top? 19 A. Yes. 20 Q. And Mr. Dibble would be one of the engineers or 21 architects that -- 22 A. He would be an engineer. 23 Q. With the outside firm of Mickle, Wagner and 24 Coleman in Fort Smith? 25 A. Yes.

10 (Pages 37 to 40)

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1 Q. Let's look at that letter. It looks like
 2 Mr. Felkins acknowledges Mr. Dibble's letter
 3 October 31, 2008, regarding the city's application,
 4 and that would be the application for the grade
 5 crossing?
 6 A. Okay.
 7 Q. Is that right? Do you think that's what it is
 8 where he says the city's application? Let's keep --
 9 A. **I do not know because I'm -- I realize that I**
 10 **was copied here, but I do not recall the letter.**
 11 Q. Okay. Let's look at the last sentence of the
 12 first paragraph. It says, Union Pacific previously
 13 discussed with the city its concerns about the
 14 unusual characteristics of the proposed crossing site
 15 and of the project and the safety issues those
 16 characteristics raised.
 17 Do you see that?
 18 A. **Uh-huh. Yes.**
 19 Q. And then the next paragraph begins, it says,
 20 Union Pacific reviews such requests with a serious
 21 regard for the safety consequences associated with
 22 its approval, period.
 23 Union Pacific did not favorably act on the
 24 city's prior request because of its strong belief
 25 that the proposed construction and pedestrian

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1 crossings presented grave safety risks to patrons of
 2 the public and to employees and equipment of the
 3 contract of the city and the railroad, period. Union
 4 Pacific continues to have those safety concerns and
 5 will not approve the request as submitted, period.
 6 Do you see that?
 7 A. **Yes.**
 8 Q. And do you recall getting a copy of this
 9 letter, Ms. Sneath?
 10 A. **Not at this time I don't recall.**
 11 Q. Okay. You can put that in our stack of
 12 exhibits.
 13 (Exhibit No. 76 was marked.)
 14 BY MR. TUCKER:
 15 Q. I'm going to show you what I will next mark as
 16 Exhibit 76. Is that a letter dated at the top
 17 October 1, 2009?
 18 A. **Yes.**
 19 Q. And then is it sent from Charlie Felkins and
 20 signed by him on page two?
 21 A. **Yes.**
 22 Q. It appears to be sent to the then Mayor of
 23 Ozark, Vernon McDaniel?
 24 A. **Yes.**
 25 Q. All right. And Mr. Felkins begins his letter

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1 by referring to the city's application for a new
 2 at-grade crossing and a new pedestrian bridge across
 3 the Union Pacific tracks here in Ozark; is that
 4 correct?
 5 A. **Yes.**
 6 Q. And then paragraph two, Mr. Felkins says,
 7 Projects which put pedestrians and vehicles in close
 8 proximity to railroad tracks have significant safety
 9 issues associated with them. Union Pacific considers
 10 those issues to be serious and insists that plans for
 11 such projects appropriately address them.
 12 Do you see that?
 13 A. **Yes.**
 14 Q. And then he states that Union Pacific is
 15 inclined to reject the city's application but would
 16 be willing to hold it in abeyance while the city
 17 develops its plans in further detail.
 18 Do you see that?
 19 A. **In the second paragraph?**
 20 Q. Yes, ma'am.
 21 A. **Yes.**
 22 Q. Okay. And in the third paragraph Mr. Felkins
 23 mentions that the proposed site has heavy traffic
 24 with trains traveling at high speeds and that there
 25 were unusual characteristics which raised additional

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1 safety concerns. He mentions multiple tracks and a
 2 sweeping curve. Do you see that?
 3 A. **Yes.**
 4 Q. Mr. Felkins says, There are also frequent
 5 switching operations which could block the crossing,
 6 and the --
 7 A. **Yes.**
 8 Q. Okay. And then in the last paragraph on page
 9 two Mr. Felkins says, Please understand that Union
 10 Pacific will not approve the city's application
 11 unless it is assured that pedestrians and railroad
 12 operations are not at risk. If those assurances
 13 cannot be gotten the application will not be
 14 approved. Do you see that?
 15 A. **Yes.**
 16 Q. Okay. If you will put that in our stack.
 17 (Exhibit No. 77 was marked.)
 18 BY MR. TUCKER:
 19 Q. Let me hand you what I will mark as Exhibit
 20 Number 77, which is a letter dated July 18, 2011,
 21 from Charlie Felkins to you as Mayor of the City of
 22 Ozark. Can you confirm the date July 18, 2011?
 23 A. **Yes.**
 24 Q. And then that letter is signed by Charlie
 25 Felkins on page two?

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1 A. Yes. 2 Q. And it's directed to you; is that right? 3 A. That's correct. 4 Q. In paragraph number three Mr. Felkins says, 5 Projects like the one the city is considering place 6 pedestrians in close proximity with the railroad 7 tracks and have significant safety issues associated 8 with them, period. 9 The general location of the city's project 10 has unique characteristics that Union Pacific must 11 address in any plans for the project, period. Some 12 of these concerns were described in a letter to Mayor 13 Vernon McDaniel in October 2009. 14 Do you see that? 15 A. Yes. 16 Q. In the next paragraph Mr. Felkins says that 17 Union Pacific is skeptical that the project's design 18 can provide the necessary safety assurances, and it 19 cannot provide the city any assurance that the 20 requests will ultimately be approved. 21 Do you see that? 22 A. Yes. 23 Q. And then in the last paragraph, third sentence, 24 Mr. Felkins states, Because of the close proximity of 25 the water to Union Pacific's tracks this position	1 Q. And the second paragraph he notes that although 2 Union Pacific will not agree to an at-grade 3 pedestrian crossing, Union Pacific would consider a 4 request for a pedestrian overpass so long as it met 5 design criteria. 6 Do you see that? 7 A. Yes. 8 Q. Were you interested in a pedestrian overpass? 9 A. Yes. 10 Q. And tell me where that went. 11 A. Funds were not available. 12 Q. Do you know how much it would have cost to put 13 one in? 14 A. It seems to me at the time that a figure of 15 two million dollars was, was discussed. 16 (Exhibit No. 79 was marked.) 17 BY MR. TUCKER: 18 Q. Okay. Let me hand to you what I will -- a 19 two-page letter -- actually, three with the carbon 20 copy receipts -- and I will hand you Exhibit Number 21 79. Is the date at the top October 23, 2012? 22 A. Yes. 23 Q. It's written to the Honorable Carol Sneath. 24 That's when you were mayor? 25 A. Yes.
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1 makes the design of the project extremely difficult. 2 Do you see that there? 3 A. Yes. 4 Q. All right. That was dated July 18, 2011. 5 (Exhibit No. 78 was marked.) 6 BY MR. TUCKER: 7 Q. I'm going to hand you another letter that 8 Charlie Felkins wrote to you dated May 9, 2012, in 9 your position of Mayor of Ozark. Do you see the date 10 May 9, 2012? 11 A. Yes. 12 Q. And it's signed by Mr. Felkins? 13 A. Yes. 14 Q. And it's written to you; is that correct? 15 A. Yes. 16 Q. As mayor? 17 A. Yes. 18 Q. And then in the first paragraph Mr. Felkins 19 writes. Simply stated, Union Pacific will not approve 20 the city's request for an at-grade pedestrian 21 crossing. Do you see that? 22 A. Yes. 23 Q. And he returned the city's check that was 24 submitted with a letter from April 30, 2012? 25 A. Yes.	1 Q. And it's signed on the second page by Patrick 2 Halsted, Union Pacific Director of Industry and 3 Public Projects? 4 A. Yes. 5 Q. And the first paragraph toward the bottom, 6 Mr. Halsted notes that, Union Pacific had repeatedly 7 expressed to the city that the project presented 8 significant safety and operational issues -- 9 A. Wait a minute. This -- 10 Q. I'm sorry. The first paragraph toward the 11 bottom, do you see where it says, "However"? 12 A. Okay. 13 Q. He writes, As Union Pacific has repeatedly 14 expressed to the city, the project presents 15 significant safety and operational issues for Union 16 Pacific? 17 A. Yes. 18 Q. At the last paragraph on page one, the first 19 paragraph on page two, Mr. Halsted notes that at 20 certain locations in the area the railroad's 21 right-of-way extends into the river? Do you know -- 22 A. Wait a minute. Where are you? 23 Q. Take a look at the last paragraph on page one, 24 and then it goes into the first paragraph on page 25 two.

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Page 49 1 A. (Witness reviews document.) Okay. 2 Q. Mr. Halsted notes that at certain locations in 3 the general area the railroad's right-of-way extends 4 into the river. Do you see that? 5 A. Yes. 6 Q. Do you know that the railroad's right-of-way on 7 both sides of the track is 50 feet? 8 A. No. 9 Q. If the railroad owns 50 feet south of the 10 tracks there are certain locations where the 11 railroad's right-of-way would actually go into the 12 Arkansas River; wouldn't it? 13 A. Yes. 14 Q. Okay. If the City of Ozark were going to have 15 a hiking trail south of the tracks and at those 16 locations where the railroad's property goes into the 17 river, how could the hiking trail be built and not be 18 on Union Pacific's property? 19 A. I think that's for an engineer to answer. 20 Q. Okay. And then in the last paragraph 21 Mr. Halsted says, I want to reiterate and emphasize 22 Union Pacific's concerns over the inherently 23 dangerous nature of an at-grade pedestrian crossing 24 for the project and the adverse effect the project 25 will have on railroad operations.	Page 51 1 correctly. Is that the way it sounds to you? 2 A. I'm not sure if it's that one or the, before 3 the meeting at city hall. 4 Q. Okay. 5 A. City council. 6 Q. The next to the last paragraph in Mr. Call's 7 letter he says, Union Pacific's top concern is 8 safety. 9 A. Where? 10 Q. I'm sorry. 11 A. Okay. Got it. 12 Q. Let me start over. Union Pacific's top concern 13 is safety for both the citizens of Ozark and Union 14 Pacific Railroad's employees. 15 As the city develops plans for the 16 riverfront, I would encourage you to consider a 17 pedestrian overpass as a safer alternative to an 18 at-grade crossing. 19 Do you see that? 20 A. Yes. 21 Q. Ms. Sneath, if I understand it right, the city 22 wants the crossing to go back in east of the depot 23 where it once was? 24 A. Yes. 25 Q. Whether we call it Oliver Street or whatever,
Page 50 1 Do you see that? 2 A. Yes. 3 Q. And then he suggests, Pedestrian overpass would 4 be less objectionable but needs specific design and 5 location information. Do you see that? 6 A. Yes. 7 Q. Okay. And, once again, that letter was dated 8 October 23 of 2012; right? 9 A. Yes. 10 (Exhibit No. 80 was marked.) 11 BY MR. TUCKER: 12 Q. And I will hand you what I will mark as Exhibit 13 Number 80, which is a letter from Thad Call, Union 14 Pacific Director of Industry and Public Projects, and 15 it's dated February 11, 2013; is that right? 16 A. Yes. 17 Q. And it is sent to you as, in your capacity as 18 mayor? 19 A. Yes. 20 Q. All right. And Mr. Call notes that he had 21 recently taken over Mr. Halsted's position in the 22 first paragraph? 23 A. Yes. 24 Q. And it appears that his letter came just before 25 the meeting at the state capitol, if I'm reading it	Page 52 1 there is only ever one grade crossing in all of 2 Ozark; right? 3 A. Right. 4 Q. At that location, is that right? 5 A. Yes. 6 Q. And, of course, the city wants to build a boat 7 dock just south of the tracks there where the 8 crossing used to be for boats to come and tie up; 9 correct? 10 A. In conjunction with the ARC folks, Arkansas 11 River Connection. 12 Q. All right. If the crossing goes back in, is it 13 your understanding that this will be a pedestrian 14 crossing, as opposed to -- 15 A. And maintenance. 16 Q. When you say "maintenance," do you mean those 17 would be the only vehicles that would actually cross 18 over the tracks over that crossing? 19 A. I would say so, yes. 20 Q. It wouldn't be, the crossing wouldn't be open 21 to any member of the public who wanted to drive over 22 the crossing at that location? 23 A. No. 24 Q. Because it wouldn't go anywhere? 25 A. Right.

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1 Q. Okay. Do you know of or have you seen any 2 studies of approximately how many pedestrians might 3 use that crossing in a given day? 4 A. No. 5 Q. Is it fair to say it's in all likelihood since 6 more people boat in the warm winter months that more 7 pedestrians would use the crossing in the summer than 8 would use it in the winter? 9 A. I would say so, yeah. 10 Q. And the current plan for the marina is to be 11 built on the south bank of the river? 12 A. Correct. 13 Q. Do you know approximately how many boats it 14 will be able to accommodate? 15 A. The long range plan is somewhere around 100. 16 Q. All right. And who is going to build the 17 marina? 18 A. A private concern. 19 Q. Who would that be? 20 A. Regina -- I can't think of her last name right 21 now, and her brother, Justin. 22 Q. Would their last name be Olson? 23 A. Yes. Regina's last name is Olson. Justin's is 24 not Olson. 25 Q. Do you recall a man named Mr. -- is it Steve	1 the river? 2 A. It would be the boat slips. Yes, they would 3 have a convenience store there, and I believe some 4 cabins. 5 Q. Yesterday Ms. Key showed us photographs of the. 6 the boat dock that Ozark hopes to get on the north 7 side of the river. Let me find those. There we go. 8 Exhibit Numbers 70 and 71. 9 Is that your understanding of what Ozark 10 wants on the north side of the river or what I call 11 sometimes the town side of the river? 12 A. Something similar to this, yes. 13 Q. Do you know where those photographs were taken. 14 where that boat dock in those pictures exists? 15 A. No. 16 Q. Ozark has applied for a grant, is that correct, 17 to have the boat dock, or what is the grant for? 18 A. It's a -- it has made application in 19 conjunction with the Arkansas River Connection. 20 Q. Okay. And who exactly is the Arkansas River 21 Connection? 22 A. It's a group who all of the way from the 23 governor down that is interested in developing 24 recreation on the Arkansas River. 25 Q. Are you a member of that organization?
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1 Outlaw? 2 A. Yes. 3 Q. Is he one of the investors in the marina 4 project, or where does he fit in in all of this? 5 A. I don't believe he is. 6 Q. Okay. I saw at one point a letter he had 7 written saying he was willing to contribute or make 8 an investment of money into the project, but I didn't 9 know if he was currently still in or not? 10 A. Not to my knowledge. 11 Q. Do you know if the marina on the south side is 12 going to be constructed irrespective of what happens 13 in this lawsuit? 14 A. Yes. 15 Q. It will be? 16 A. I believe so. 17 Q. Okay. Has the construction begun? 18 A. No. 19 Q. Do you know when it is scheduled to begin? 20 A. No. 21 Q. Will the marina just accommodate boats? I have 22 seen some plans that say something about a 23 convenience store and maybe restaurants. 24 Tell me what your understanding is of what 25 will be contained in the marina on the south side of	1 A. Not me specifically, no. 2 Q. Is anyone from Ozark? 3 A. Sandy is on their board. 4 Q. Okay. And if I understood what Sandy told me 5 yesterday, not just Ozark but there are several 6 communities along the river that have applied for a 7 grant from the Arkansas River Connection? 8 A. Yes. 9 Q. What is your -- strike that. Was this 10 application submitted while you were still mayor? 11 A. Yes. 12 Q. Was it last year in 2014? 13 A. I cannot recall at this time. 14 Q. Do you know the other towns or cities that are 15 included in that grant application? 16 A. I'd have to refresh my memory on that. 17 Q. If the grant -- do you know what the total 18 amount of the grant is that's being sought? 19 A. No. 20 Q. Do you know if the grant is approved how much 21 would be allocated toward the City of Ozark? 22 A. No. 23 Q. Ozark already got one grant, is that correct, 24 to develop its riverfront area? I believe it's -- 25 A. Yes.

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1 Q. -- \$200,000? 2 A. Yes. 3 Q. Who did that grant come from? 4 A. I cannot recall at this time. 5 Q. Do you know how much of that grant money is 6 still left? 7 A. I believe it's about 80,000. 8 Q. Okay. And where did the \$120,000 out of that 9 grant money go? What was it spent on? 10 A. Some of it went to the engineers for drawings, 11 architectural designs. I'd have to look at the 12 records to refresh my memory. 13 It's -- I think that there was an engineer 14 in Little Rock and our engineers for the city, 15 Mickle, Wagner & Coleman. Some of that money was 16 spent to retain Christopher Brockett for... 17 Q. Legal fees? 18 A. Yes. 19 Q. I believe it's my understanding those were 20 about \$20,000? 21 A. Yes, that was -- uh-huh. 22 Q. Okay. Anything else that you can think of that 23 \$120,000 out of the original \$200,000 grant was spent 24 on? 25 A. Without refreshing my mind, I don't know.	1 Q. Does Ozark have to spend that \$319,000, or can 2 it decide it doesn't want to spend that money on this 3 project? 4 A. I'd have to go back and check the grant on that 5 to see whether -- I don't believe -- I think they 6 have to stay committed to that. 7 Q. When you say "have to stay committed to that," 8 I'm trying to understand what that means. Does Ozark 9 have to as a condition of getting the \$200,000 grant? 10 A. Receiving it, yes. 11 Q. Does Ozark have to spend its \$319,000 toward 12 this project? 13 A. Again, I would have to check the grant language 14 on that. 15 Q. Okay. And then we talked about Ozark applying 16 for a second grant through the Arkansas River 17 development -- 18 A. River Connection. 19 Q. Okay. Thank you. ARC, Arkansas River 20 Connection, and is it your understanding that this 21 second grant application, is it a grant for federal 22 money or state money? In other words -- 23 A. I do not recall. 24 Q. In other words, who gives the money as part, as 25 the grant?
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1 Q. What document would you need to look at to 2 refresh your recollection? 3 A. The information at city hall. 4 Q. Did you write the checks -- 5 A. Yes. 6 Q. -- that spent the grant money? 7 A. Yes. 8 Q. Including the ones to the engineers and checks 9 for services to Mr. Brockett? 10 A. Yes. 11 Q. When the city submitted its application for and 12 received the grant of \$200,000, I believe the city 13 said that it would be willing to spend \$319,000 of 14 its own money on the project; is that correct? 15 A. Yes. 16 Q. Has the city spent any of its \$319,000? 17 A. No, no. 18 Q. Is that in a separate account somewhere apart 19 from general funds that -- 20 A. No. 21 Q. Okay. So that \$319,000 has not been set aside 22 anywhere; is that right? 23 A. Only through budget. 24 Q. Okay. 25 A. And commitment against the grant.	1 A. I do not recall at this time. I wasn't that 2 involved with the, the ARC grant application. 3 Q. Do you know when the ARC grant application was 4 submitted? 5 A. No. 6 Q. Was it during your tenure as mayor or after? 7 A. Oh, it would have been during. 8 Q. Okay. 9 A. But that's handled by the ARC board, the grant 10 application. 11 Q. Do you -- does the mayor's office have a copy 12 of the grant application? 13 A. I don't think we do. 14 Q. If I wanted to get a copy of that where would I 15 go? 16 A. To the Arkansas River Connection board, I 17 believe. 18 Q. Is that located in Little Rock? 19 A. Yes. 20 Q. If the grant is approved do you know how much 21 money Ozark will get out of that? 22 A. No. 23 Q. Do you know how much Ozark applied for as part 24 of the grant, in other words, we're seeking "x" 25 amount of dollars?

15 (Pages 57 to 60)

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1 A. No. 2 Q. As a condition to receiving any money under 3 that grant do you know if Ozark had to pledge any of 4 its own general revenues toward that? 5 A. I can't recall. 6 Q. Because in grant number one Ozark had to pledge 7 a certain amount -- 8 A. Right. 9 Q. -- of tax dollars? 10 A. Right. 11 Q. To be able to get that \$200,000 grant; right? 12 A. Right. 13 Q. But you don't recall in the ARC grant if there 14 are any requirements that Ozark pledge a certain 15 amount of money to receive that grant? 16 A. It's the ARC board that is making application 17 for the grant. 18 Q. Who are they making application to? 19 A. I do not know. 20 Q. But the ARC board, I take it, is representing 21 City of Ozark and then some other communities? 22 A. Yes. 23 Q. Under sort of an umbrella? 24 A. Yes. 25 Q. Do you know who any of those communities are?	1 know what Ozark intends to do with the remaining 2 \$80,000 in grant money that it has from grant number 3 one? 4 A. It's still dedicated to development on the 5 river. 6 Q. Specifically, do you know what that \$80,000 7 would be used for? 8 A. No. 9 Q. And is Ozark permitted to use up the \$80,000 of 10 grant number one before it spends any of its own 11 money that it pledged toward the project, the 12 \$19,000? 13 A. Repeat that. 14 Q. What I'm trying to get in my mind is can Ozark 15 spend the remainder of the grant money for grant 16 number one \$80,000 before it has to spend any of the 17 money it pledged at \$319,000? 18 A. Yes. 19 Q. But once the remaining \$80,000 of grant number 20 one is spent is Ozark obligated to spend \$319,000 on 21 the project? 22 A. Again, I'd have to look at the legality of the 23 application. 24 Q. If the City of Ozark does not get the crossing 25 reinstalled to cross Union Pacific's tracks, will the
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1 A. I just know that they're, all of them are along 2 the, on the Arkansas River, connected with the 3 Arkansas River. I'm not sure if Pine Bluff is. It 4 seems to me that there was one south of Pine Bluff. 5 Q. And the different communities that are seeking 6 grants through the ARC board, would that be for 7 riverfront development projects? 8 A. I can't answer that. I do not know. 9 Q. Do you know when a decision is expected to be 10 made on the application for the ARC? 11 A. No. 12 Q. And I think it was Ms. Key. It could have been 13 Mr. McNutt, but I think it was Ms. Key yesterday that 14 said that the application goes to the United States 15 Fish and Wildlife Service. Do you know if that's 16 correct? 17 A. It sounds logical. 18 Q. And I'm guessing the U.S. Fish and Wildlife 19 Services is based in Washington D.C., but it may be 20 that they have local offices in Little Rock. Do you 21 know where that application ultimately goes? 22 A. No. 23 Q. If Ozark doesn't get the ARC grant -- sorry. 24 Strike that. If the ARC grant is not approved and 25 Ozark doesn't get anything from that grant, do you	1 plans for the walking trail go forward, or were 2 those -- 3 A. That would have to be made, a decision made at 4 that time. 5 Q. Has any work been done on the walking trail 6 south of the tracks? 7 A. No. We haven't had access. 8 Q. Well, has the City of Ozark ever asked Union 9 Pacific for temporary access to go over -- I think 10 y'all wanted to go have a clean-up day or something 11 like that? 12 A. Rephrase that question. 13 Q. Sure. I think the City of Ozark one time in 14 the recent past said we want to have access to the 15 property release south of the tracks from the Corps, 16 and we want to do some cleanup work over there. Has 17 that happened? Have y'all had any type of clean-up 18 day? 19 A. No. 20 Q. Have y'all -- when I say "y'all," I'm talking 21 about when you were mayor, did you all request from 22 Union Pacific the opportunity to have access over the 23 tracks for that type of clean-up work; do you recall? 24 A. I can't recall at this time. 25 Q. Okay. And I know you're not mayor anymore, but

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1 if a request is made through Mr. Brockett it can get 2 to me, and I can try to make arrangements with the 3 railroad if that is anything that the City of Ozark 4 wants to do. 5 And you may be out of that entirely. I 6 don't know. Are you still in this -- how would I 7 phrase this? Are you still actively participating in 8 the litigation, even though you are not mayor 9 anymore? 10 A. Well, I'm here today. 11 Q. I know, as a witness, but -- are you on Main 12 Street Ozark? 13 A. I am not on their board, no. 14 Q. Now that you are no longer mayor did you 15 take -- walked away from all of the -- 16 A. No. 17 Q. Okay. Tell me what your involvement is 18 currently. 19 A. Well, the most -- the main one that I'm 20 involved in right now is the art society. 21 Q. But the art society doesn't have anything to do 22 with -- 23 A. No. 24 Q. -- the street or the crossing? 25 A. No.	1 reopen the crossing? 2 A. Yes. 3 Q. And do you recall what was said at that 4 meeting? 5 A. Without refreshing my memory, no. 6 Q. Was it Ms. Key, or was it someone else? 7 A. I'd have to go back and check the minutes. 8 Q. Do you recall if it was more than one person or 9 just one person? 10 A. I'd have to refresh my memory. 11 Q. If I'm not mistaken, the city council voted 12 three to three on whether or not to file the lawsuit 13 against -- 14 A. That's correct. 15 Q. And you were the tie breaking vote? 16 A. That's correct. 17 Q. And you voted in favor of pursuing the lawsuit? 18 A. Yes. 19 Q. Who were the three that voted for, and who were 20 the three that voted against it? 21 A. Lee Gardner. 22 Q. Are we talking for or against? 23 A. For. Lee Gardner. 24 Q. Is he still on the council? 25 A. No. Harvey Waters.
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1 Q. Are you still involved in any organizations -- 2 A. No. 3 Q. -- apart from being a witness, that have to do 4 with the riverfront project, or the crossing, or the 5 street? 6 A. No. 7 Q. Okay. 8 A. But my heart is with Ozark. 9 Q. I understand, because you were involved with it 10 while you were mayor? 11 A. Yes. 12 Q. When you were mayor there was a vote taken 13 about whether or not to file a lawsuit against Union 14 Pacific to reopen the crossing? 15 A. Yes. 16 Q. Who was it that, that made that proposal? 17 A. Who made the motion? 18 Q. Yes, ma'am. 19 A. Without going back and checking the minutes, I 20 can't say. 21 Q. Do you recall who seconded the motion? 22 A. No. 23 Q. Did Ms. Key or someone from Main Street Ozark 24 come to the city council meeting where the motion was 25 voted on to speak in favor of pursuing the lawsuit to	1 Q. He is still on the council? 2 A. Yes, and Melinda Keeton. 3 Q. Is she still on the council? 4 A. No. 5 Q. And the three who voted against it were whom? 6 A. Roxie Hall, Rex Anderson, and T.R. McNutt. 7 Q. Ms. Hall is still on the council? 8 A. Yes. 9 Q. Mr. Anderson is still on the council? 10 A. Yes. 11 Q. And Mr. McNutt is mayor? 12 A. Yes. 13 Q. Do you know if -- do you still attend city 14 council meetings? 15 A. At times I do, yes. 16 Q. While you were mayor was there any push at all 17 to dismiss the lawsuit against Union Pacific? 18 A. Explain. 19 Q. Did anybody at a council meeting or one of the 20 council members say, Listen, I think we have gone 21 down the wrong road with this lawsuit against the 22 railroad. We ought to just drop it, words to that 23 effect? 24 A. Since the original passage? 25 Q. Yes, ma'am.

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1 **A. I don't recall anything specific in council**
 2 **meetings, just word on the street.**
 3 Q. Mr. McNutt testified yesterday, and, of course,
 4 he ran against you in your mayoral race?
 5 **A. Yes.**
 6 Q. He said that he campaigned a lot on dismissing
 7 the lawsuit against the railroad, and that the people
 8 he talked with mostly around town were in favor of
 9 dismissing the lawsuit.
 10 Did you talk with a number of your
 11 constituents when you were running for reelection
 12 about the lawsuit against the railroad or about the
 13 crossing or the street?
 14 **A. In my campaign?**
 15 Q. Yes, ma'am.
 16 **A. Not specifically.**
 17 Q. Did people tell you what they thought, whether
 18 you campaigned on it or not? Did people tell you
 19 what they thought about the lawsuit against the
 20 railroad or the crossing?
 21 **A. No.**
 22 Q. So you wouldn't be able to tell me, I take it
 23 as we sit here today, what the feeling is among the
 24 residents of Ozark about the lawsuit against Union
 25 Pacific?

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1 **A. I would venture to say it's 50/50.**
 2 Q. Okay. Tell me what you base that on.
 3 **A. Well --**
 4 Q. Just a feeling that you have? And that's fine.
 5 I'm just wondering.
 6 **A. Yeah.**
 7 Q. Okay.
 8 **A. Much of it is in the way that the case is**
 9 **presented to them.**
 10 Q. Tell me about that.
 11 **A. If you ask negative comments, questions, you're**
 12 **going to get negative comments.**
 13 Q. I think I know what you're saying there. If
 14 you phrase the question in a certain manner, it's
 15 more likely to elicit a certain type of response?
 16 **A. Yes.**
 17 Q. And if you phrase the question to someone in a
 18 different manner, it could elicit a different
 19 response?
 20 **A. Exactly.**
 21 Q. Okay. I understand. One alternative to an
 22 at-grade crossing would be a pedestrian overpass;
 23 right?
 24 **A. Yes.**
 25 Q. What about taking vans from the marina on the

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1 south side of the river and bringing those people
 2 into downtown Ozark, has that been considered, a type
 3 of shuttle service?
 4 **A. It still doesn't solve the problem of traffic**
 5 **on the river.**
 6 Q. Tell me what you mean by that.
 7 **A. Someone that's just coming up and down the**
 8 **river and not necessarily over on the, in the marina.**
 9 **Transient, that's why it's called a transient dock.**
 10 Q. Is because of what?
 11 **A. People coming up and down the river and just**
 12 **wanting to stop.**
 13 Q. But I take it people going up and down the
 14 river could stop on the marina on the south side of
 15 the river, hop a shuttle and be shuttled into
 16 downtown?
 17 **A. If there was a shuttle service.**
 18 Q. Has the city looked into that possibility?
 19 **A. I haven't put any pen and pencil to it, no.**
 20 Q. Because if a shuttle service was used, then
 21 nobody would have to cross Union Pacific's tracks to
 22 go into downtown; correct?
 23 **A. I don't agree with that. Rephrase it.**
 24 Q. Yeah. If a boat load of people stopped at the
 25 marina on the south side of the river and hopped into

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1 a shuttle service, it could bring them over the
 2 highway bridge into downtown and never have to cross
 3 the railroad tracks at-grade?
 4 **A. Sure.**
 5 Q. Did the city purchase some land west of the
 6 depot on which to construct a pedestrian overpass?
 7 **A. Yes.**
 8 Q. And where was the land that the city purchased?
 9 Would it be south of the tracks, at that location?
 10 **A. South of the tracks?**
 11 Q. Yes, ma'am, or north of the tracks?
 12 **A. North of the tracks.**
 13 Q. And the purpose was to put in a pedestrian
 14 overpass at that location?
 15 **A. In anticipation that that might happen, yes.**
 16 Q. Do you remember how much the city paid for that
 17 land?
 18 **A. Not specifically, but I believe it was in the**
 19 **general area of \$8,000.**
 20 Q. Was it later determined how much a pedestrian
 21 overpass would cost, and that's why that idea was
 22 dropped?
 23 **A. Rephrase that question.**
 24 Q. Yeah, what I'm trying to understand is why
 25 would the city buy land for a pedestrian overpass if

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1 it knew that it couldn't afford a pedestrian 2 overpass? 3 A. I think it was purchased with the anticipation 4 that there may be money available from different 5 locations, whether it's a grant, whether it was Union 6 Pacific, because that was discussed by Thad Call at 7 one time. You always try to look down the road. 8 Q. Okay. Let me hand to you, Ms. Sneath, a 9 two-page letter that you wrote to Charlie Felkins. 10 If you'll look at that, please, and confirm that that 11 is a letter that you wrote to Charlie Felkins. 12 Sorry, I need to mark that as an exhibit. Let me put 13 Exhibit 81 at the bottom. 14 A. (Witness reviews document.) Yes. 15 Q. Okay. Let me put an exhibit sticker on that, 16 and I will make it Exhibit Number 81. 17 (Exhibit No. 81 was marked.) 18 BY MR. TUCKER: 19 Q. That is a two-page letter from you to 20 Mr. Charlie Felkins dated June 30, 2011; is that 21 right? 22 A. Right. 23 Q. In the third paragraph on page one, you state, 24 According to our logs, most of the UP trains coming 25 through downtown at speeds of 45 miles an hour to	1 Q. -- in that paragraph? So is it fair to say 2 that a derailment in downtown Ozark is a serious 3 concern of yours? 4 A. Certainly. 5 Q. And you understand that the railroad carries 6 hazardous materials, including certain toxic 7 chemicals through the City of Ozark? 8 A. Yes. 9 Q. Are you aware, Ms. Sneath, that if a train on 10 straight tracks has to apply its emergency brakes 11 that there is a risk that that train could derail? 12 A. I think that's something we all understand. 13 Q. And are you aware, Ms. Sneath, that if a train 14 has to apply its emergency brakes in order to avoid 15 an accident, and the train is on curved tracks that 16 the chance, that the risks of that train derailling 17 are greater than if that train were on straight 18 tracks? 19 A. Sure. 20 Q. And there is a broad sweeping curve for trains 21 going west coming into Ozark; correct? 22 A. Going west? 23 Q. Yes, ma'am, to the east of the depot -- 24 A. Yes. 25 Q. There is a big curve coming around the tracks?
Page 74	Page 76
1 55 miles an hour are daily rattling windows in 2 close-by businesses. Do you see that? 3 A. Uh-huh. 4 Q. Is that a "yes"? 5 A. Yes. 6 Q. Thank you. What logs are you referring to? 7 A. I guess I'd have to defer this one to Sandy 8 Key. 9 Q. Did she draft this letter for you? 10 A. Yes, she did. 11 Q. If you'll look with me on page two, the first 12 paragraph says, The riverfront area is the 13 centerpiece of our tourism development future, and we 14 are seriously concerned about the possibility of a 15 derailment in the downtown vicinity due to the 16 present excessive speed of trains. 17 If there were to be such an accident in 18 this busy riverfront location, we could lose our 19 entire historic district, not to mention the 20 potential loss of life. 21 Do you see that? 22 A. Yes. 23 Q. And I take it since you signed the letter you 24 agree with that statement -- 25 A. Yes.	1 A. Yes. 2 Q. I mean, I could show you photographs, but 3 you're aware of what I'm talking about? 4 A. Yes. 5 Q. And if the pedestrian crossing goes in at the 6 location where the crossing was taken out, of course, 7 you would expect boaters and pedestrians, people, to 8 walk across that crossing? 9 A. Yes. 10 Q. And if a train were coming around that curve, 11 and the engineer thought that he might strike one of 12 those pedestrians, you would expect him to try to 13 avoid the accident? 14 A. I would hope so. 15 Q. Including blowing the horn and applying the 16 train's emergency brakes? 17 A. Yes. 18 Q. Fair? 19 A. Yes. 20 Q. Okay. And if through application of the 21 train's emergency brakes that train derailed, and it 22 were carrying hazardous materials, some of those 23 hazardous materials could be dumped on the ground in 24 Ozark? 25 A. Yes.

19 (Pages 73 to 76)

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1 Q. Some of it could go into the Arkansas River? 2 A. Yes. 3 Q. And if it went into the Arkansas River, that 4 would cause a severe environmental contamination? 5 A. Yes. 6 Q. Okay. And it could cause severe environmental 7 contamination if a tank car were breached and went on 8 the ground at the location of derailment? 9 A. Yes. 10 Q. And, of course, if the crossing goes in, and a 11 train struck a pedestrian, that would create a risk 12 of severe injury or death to the pedestrian; could it 13 not? 14 A. Yes. 15 Q. And it could also cause injuries to railroad 16 crew members? 17 A. Yes. 18 Q. If Ozark prevails, and the crossing is 19 reinstalled, does Ozark have plans for any type of 20 traffic warning devices at the crossing? 21 A. I seem to recall that in some of our engineers 22 and architectural drawings that we have submitted 23 that. 24 Q. But if Ozark prevails, and the crossing is 25 reinstalled, nothing would bind Ozark to putting up	1 A. Yes. 2 Q. And I think I have heard him referred to as 3 Bat, B-a-t, Coley. Was that his nickname? 4 A. Yes. 5 Q. You were city clerk in 2005? 6 A. Yes. 7 Q. Let me hand you what I have marked as Exhibit 8 82, and is that a letter from C.L. Coley to Joe Craig 9 of the Corps of Engineers? 10 A. Yes. 11 Q. Dated August 25th, 2005? 12 A. Yes. 13 Q. And he mentions that Main Street Ozark has 14 extensive plans for a riverfront development in the 15 first paragraph -- 16 A. Yes. 17 Q. -- and states that the city would like to annex 18 the southern shore of the Arkansas River to 19 accommodate its plans? 20 A. Yes. 21 Q. Did the city actually annex the southern shore 22 of the Arkansas River? 23 A. Yes. 24 Q. Do you recall what year that was? 25 A. No, I can't recall specifically which year.
Page 78	Page 80
1 flashing lights or flashing lights and gates or 2 flashing -- 3 A. Say that again. 4 Q. Yeah. Let's say Ozark prevails in this 5 lawsuit, and Union Pacific has to reinstall the 6 crossing. 7 A. Uh-huh. 8 Q. Of course, the crossing at the time it was 9 taken out didn't have flashing lights or flashing 10 lights and gates; did it? Correct? 11 A. Yes. 12 Q. Okay. If Union Pacific's is ordered to put 13 that crossing back in, nothing would force Ozark to 14 put up flashing lights or flashing lights and gates 15 that would alert people to the approach of a freight 16 train; would it? Ozark could, but it wouldn't have 17 to is my point. 18 A. I suppose that's correct, yes. 19 Q. Okay. I am going to hand you what I am going 20 to mark as Exhibit Number 82. 21 (Exhibit No. 82 was marked.) 22 BY MR. TUCKER: 23 Q. Do you remember C.L. Coley? 24 A. I remember him, yes. 25 Q. Is he deceased now?	1 Q. Okay. Do you see the first bullet point that 2 Mayor Coley had in his letter to the Corps of 3 Engineers? 4 A. Uh-huh. 5 Q. I'm sorry. Is that a "yes"? 6 A. Yes. 7 Q. It states, Due to safety concerns posed by the 8 Union Pacific Railroad tracks on the north shore of 9 the river, the southern shore is a more suitable 10 location for the marina; is that correct? 11 A. Yes. 12 Q. Do you know what safety concerns Mr. Coley was 13 referencing about the Union Pacific tracks being on 14 the north shore of the river, and that's why the 15 southern shore would be a better place for the 16 marina? 17 A. No, I can't. 18 Q. I didn't know if as city clerk you worked with 19 him, or typed this letter, or drafted it? 20 A. I believe Sandy typed this letter. 21 Q. Okay. And I'm not doubting you, but what makes 22 you think that? Why is it that you think that? 23 A. Because it specifically states in here that 24 Main Street Ozark has extensive plans for riverfront 25 development.

20 (Pages 77 to 80)

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1 Q. Okay. Let me hand you, Ms. Sneath, what I'm 2 going to mark as Exhibit Number 83. 3 (Exhibit No. 83 was marked.) 4 BY MR. TUCKER: 5 Q. Does that -- what does that say at the top? 6 A. It's a resolution. 7 Q. What was the date that the resolution was 8 passed? 9 A. April of 2003. 10 Q. And did you sign it as mayor? 11 A. Yes. 12 Q. And tell me what the title of the resolution 13 is? 14 A. A resolution confirming that Oliver Street is a 15 public street, owned street, which includes legal 16 access to the Arkansas River and confirming railroad 17 traffic speeds are excessive within the city limits 18 and should be reduced. 19 Q. All right. And it is resolved, and paragraph 20 number two says that the railroad companies travel at 21 unsafe speeds within the city limits and should 22 reduce their speed for the safety of the public. Is 23 that correct? 24 A. Yes. 25 Q. And what speeds did you and the rest of the	1 that the railroad ought to reduce their speed to? 2 A. Slower than 79. 3 Q. Well, they never come through Ozark at 79. You 4 know that? 5 A. Yeah. 6 Q. Did you have any speed in your mind -- 7 A. No. 8 Q. Okay. 9 A. Did not. 10 (Exhibit No. 84 was marked.) 11 BY MR. TUCKER: 12 Q. And then Exhibit Number 84 is the letter that 13 you sent to Thad Call dated April 10, 2013; is that 14 right? 15 A. Yes. 16 Q. Where you enclosed a copy of the resolution? 17 A. Yes. 18 Q. Okay. Have you seen photographs -- or strike 19 that. Ms. Sneath, have you seen No Trespassing signs 20 in the area of where the road used to be and the 21 crossing used to be? 22 A. Yes. 23 Q. And those have been up for a long time, as far 24 as you know? 25 A. I don't think they have been there forever.
Page 82	Page 84
1 city council members consider to be unsafe as stated 2 in this resolution? 3 A. I think this was a result of the meeting in 4 Little Rock where we were told that the, by Chad. 5 Q. Thad? 6 A. Thad. I always got his name confused. I'm 7 sorry. But that Union Pacific had the ability to 8 travel 79 miles an hour. 9 Q. Do you understand that the Federal Railroad 10 Administration set speeds on train tracks? 11 A. Yes. 12 Q. Okay. In the resolution, even though it says 13 railroads travel at unsafe speeds within the city 14 limits and it says should reduce their speed for the 15 safety of the public, it does not mention what speed 16 you all wanted the railroad to reduce to; does it? 17 A. No. 18 Q. Did you have anything in mind? I think a while 19 ago you told me 45 miles an hour. 20 A. No. What I said was there was an ordinance in 21 place. 22 Q. I'm sorry. 23 A. Passed way back when, but that's the only 24 reference to. 25 Q. Did you have any speed limit in your mind as,	1 Q. Do you recall when the No Trespassing signs 2 went in? 3 A. My recollection is that they showed up after we 4 started the back-and-forth communications. 5 Q. Do you have an approximate year? 6 A. No. 7 Q. You would agree that currently if someone walks 8 over Union Pacific's tracks they would be trespassing 9 on Union Pacific property? 10 A. Yes. 11 Q. So at least Union Pacific is trying to do 12 something to prevent the public from crossing the 13 railroad tracks in the downtown area; is that 14 correct? 15 A. Yes. 16 Q. If the pedestrian crossing goes in where the 17 crossing was once in place, would it be open 24/7? 18 A. I guess that's a determination that could be 19 made at that time, but there's nothing to say that it 20 would have to be 24/7. 21 Q. And I think we covered this earlier. You don't 22 know how many people each day would go across? 23 A. No. 24 Q. And the city is looking for economic 25 development from people boating over from the marina

21 (Pages 81 to 84)

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1 or just going up and down the river, docking their 2 boat at the dock on the north side and then walking 3 into town? 4 A. Yes. 5 Q. And I think one of the activities you 6 anticipated tourists doing would be going to antique 7 shops, hopefully spending their money and then 8 taking -- 9 A. Exactly. 10 Q. -- and then taking some antique back across -- 11 A. Eating in our restaurants, uh-huh. 12 Q. -- back across the crossing and into their 13 boats? 14 A. Yes. 15 Q. And you said eating in your restaurants. There 16 are all -- certain restaurants and clubs also serve 17 alcohol in Ozark; correct? 18 A. I'm trying to think of the restaurants, and I 19 don't recall any of the restaurants in Ozark, but 20 certainly there are clubs, yes. 21 Q. That serve alcohol? 22 A. Yes. 23 Q. If the crossing goes back in does Ozark have 24 any plans how to guard against people who become 25 intoxicated and try to cross the railroad tracks?	1 Q. Are you aware of any written documentation that 2 shows that a crossing at that location was ever 3 dedicated as a city crossing? 4 A. No. 5 Q. Are you aware of any written documentation that 6 shows that any crossing in the City of Ozark was ever 7 dedicated as a city crossing? 8 A. Ask that question again. 9 Q. Are you aware of any written documentation that 10 shows that any grade crossing in the City of Ozark 11 was ever dedicated as a city crossing? 12 A. No. 13 Q. Are you aware of any recorded plat purporting 14 to dedicate Oliver Street for a public use? 15 A. I believe there was one in existence in the 16 courthouse years, a long time ago when the, when the 17 city was laid out. 18 Q. When would that have been? 19 A. I guess back in the 1800's. 20 Q. Do you know if that recorded plat still exists? 21 A. No. 22 Q. And you have never seen it? 23 A. No. It was lost in the fire. 24 Q. Are you aware of any recorded plat purporting 25 to dedicate an Oliver Street crossing for a public
Page 86	Page 88
1 A. Not at this time. 2 Q. Did the city give any serious consideration to 3 putting the boat dock in Gar Creek off the channel? 4 A. That had been discussed, but because of the 5 railroad tracks and the Highway 64 bridge, it's too 6 low to accommodate a lot of boats, the height of the 7 boats. 8 Q. Let me change directions and ask you about 9 Oliver Street. And I take it that you call it Oliver 10 Street because maybe you have seen some older maps 11 that state Oliver Street on it; is that right? 12 A. Yes. 13 Q. It's not because you ever saw an Oliver Street 14 sign up from the time you moved to Ozark? 15 A. Yes. 16 Q. From 1992 forward; right? 17 A. Yes. 18 Q. All right. I doubt you know, have the 19 information on these next series of questions, but I 20 need to ask you just for the record; okay? 21 A. Okay. 22 Q. Are you aware of any written documentation that 23 shows that Oliver Street was ever dedicated as a city 24 street? 25 A. No.	1 use? 2 A. No. 3 Q. Are you aware of any ordinance accepting a 4 recorded plat dedicating Oliver Street to a public 5 use? 6 A. No. 7 Q. Are you aware of any ordinance accepting a 8 recorded plat dedicating an Oliver Street crossing to 9 a public use? 10 A. No. 11 Q. Are you aware of any ordinance by the city 12 establishing a right-of-way for Oliver Street? 13 A. Not any document, no. 14 Q. Are you aware of any ordinance by the city 15 establishing a right-of-way for an Oliver Street 16 crossing? 17 A. No. 18 Q. There is no record of which you are aware of 19 the city condemning Oliver Street for a public use? 20 A. No. 21 Q. The city's never initiated condemnation 22 proceedings for the purpose of establishing a 23 right-of-way for an Oliver Street crossing? 24 A. No. 25 Q. There is no recorded easement or other

22 (Pages 85 to 88)

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1 instrument granting the city the right to cross Union 2 Pacific's right-of-way and tracks? 3 A. Not that I'm aware of. 4 Q. Are you aware of any city funds used for the 5 purpose of maintaining Oliver Street since the Ozark 6 pool was flooded in the 1970's? 7 A. Not that I'm aware of. 8 Q. Do you know who constructed Oliver Street? 9 A. No. 10 Q. Do you know who constructed the crossing over 11 the tracks? 12 A. No. 13 Q. You've lived here in this town since 1982 14 [sic]? 15 A. Ninety-two. 16 Q. Ninety-two, I apologize. That would be for the 17 past 24, 25, 23, 24 years, something like that? 18 Twenty-three years? 19 A. Yeah. 20 Q. Okay. 21 A. Yes. 22 Q. Okay. And you have seen railroad employees 23 working at the location where Ozark wants the 24 crossing; haven't you? 25 A. Yes.	1 in this case? That's the legal document that got the 2 lawsuit going. 3 A. Rephrase that, or explain what you're -- 4 Q. Were you involved with Mr. Brockett in the 5 preparation of the Complaint in this case? 6 A. Yes. 7 Q. Okay. 8 A. Not formally, but... 9 Q. Not drafting it? 10 A. Exactly. 11 Q. But you provided information that he was able 12 to then use to -- 13 A. Some of the information, yes. 14 Q. Okay. Have you read the Complaint or the 15 Amended Complaint? 16 A. Yes, I have. 17 Q. Do you know what is being sought in the 18 lawsuit? 19 A. That we want our crossing back. 20 Q. Anything else? 21 A. I'd have to go back and visit the document. 22 Q. Okay. Now you mentioned that Mr. Brockett had 23 been paid \$20,000 to date; is that correct? 24 A. That's correct. 25 Q. And were you the one who wrote the check?
Page 90	Page 92
1 Q. And that's not uncommon; is it? 2 A. No. 3 Q. It's not uncommon to see trains going through 4 the location where Ozark wants the crossing? 5 A. Yes. 6 Q. It's not uncommon? 7 A. It's not uncommon, no. 8 Q. It's not uncommon to see equipment stored on 9 that side track; correct? 10 A. Correct. 11 Q. And it's not uncommon to see trains and 12 railcars being stored on the side track? 13 A. Correct. 14 Q. Have you ever seen a train parked on the side 15 tracks so another train can go by it on the main 16 line? 17 A. I have not seen that, no. 18 Q. But you have seen trains parked on the side 19 track? 20 A. Yes. 21 Q. And whether or not another train was coming 22 down the main line, you may not have observed that? 23 A. I might not have paid attention. 24 Q. Were you involved, Ms. Sneath, in the 25 preparation of the Complaint or the Amended Complaint?	1 A. Yes. 2 Q. Had there originally been approximately \$50,000 3 or so set aside to pay him? 4 A. Not to my recollection. 5 Q. Was it agreed between the city and Mr. Brockett 6 that he would be paid a flat fee of \$20,000, or would 7 he be paid -- 8 A. That's what I recall at this time. 9 Q. Okay. It wasn't as if he would submit bills 10 from time to time, and those bills would be paid as 11 they were submitted? 12 A. No. 13 Q. Okay. And you said the money that has been 14 paid to Mr. Brockett came from the first grant; is 15 that correct? 16 A. Yes. 17 Q. Did you make a determination or ask anyone 18 whether or not it was legal to pay attorney's fees 19 from the grant that Main Street Ozark received? 20 A. We checked with a gal at Western Arkansas 21 Planning and Development, and basically that was in 22 the scope of the development, the plan. 23 Q. Where is Western Arkansas Planning and 24 Development located? 25 A. Fort Smith.

23 (Pages 89 to 92)

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1 Q. And you said "we checked with a gal." Do you 2 recall who that was? 3 A. Sasha Grist. 4 Q. Can you spell that name? Would it be 5 S-a-s-h-a. 6 A. S-a-s-h-a, G-r-i-s-t. 7 Q. Do you know if she's still there? 8 A. Yes. 9 Q. Do you have a phone number for her? 10 A. Not without doing research. 11 Q. But she works for Western Arkansas? 12 A. Western Arkansas Planning and Development. 13 She's with this district up here. 14 Q. Okay. Did you ever check with anyone with the 15 Arkansas Legislature or Legislative Committee? 16 A. No. 17 Q. I have heard a name Morris Jenkins. Do you 18 know who that is? 19 A. I am familiar of his name, yeah. 20 Q. Did you ever speak with Morris Jenkins? 21 A. I didn't speak with him on that, no. 22 Q. Did you ever speak with anyone other than 23 Ms. Grist about the legality of paying attorney's 24 fees out of the grant? 25 A. No.	1 mark as deposition Exhibit Number 85. 2 (Exhibit No. 85 was marked.) 3 BY MR. TUCKER: 4 Q. This is A two-page letter from the Federal 5 Railroad Administration which in the first paragraph 6 says, Thank you for your letter. Do you see that? 7 A. Yes. 8 Q. Do you remember writing a letter to the Federal 9 Railroad Administration, or did Ms. Key do that? 10 A. Ms. Key did that. 11 Q. Is it your signature? 12 A. Yes. 13 Q. And I take it that you signed that letter to 14 the FRA? 15 A. I'm sure that I did. 16 Q. Okay. 17 A. Main Street has always been the point of 18 contact on this project. 19 Q. Okay. Even though they are not one of the, 20 they are not the named Plaintiff in the lawsuit? The 21 named Plaintiff is City of Ozark; is that right? 22 A. Right. 23 Q. Let's look at the FRA letter to you. It's 24 dated September 26th, 2012? 25 A. Yes.
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1 Q. Was the grant actually extended to Main Street 2 Ozark, or was it given to the City of Ozark? 3 A. Any grants are, the funds come through the 4 city. 5 Q. Okay. So grant number one that the funds got 6 came actually to the city? 7 A. Correct. 8 Q. Not to Main Street Ozark? 9 A. That's correct. 10 Q. And if the city gets approval for the ARC 11 grant, that will come to the city rather than to Main 12 Street Ozark? 13 A. Yes. 14 Q. And the, whoever the mayor is has the check 15 writing authority? 16 A. Yes. 17 Q. Okay. Do you recall inquiring, Ms. Sneath, 18 with the Federal Railroad Administration about 19 whether or not the crossing at issue was public or 20 private? 21 A. I didn't make that inquiry. 22 Q. Do you know who did? 23 A. I believe it was Sandy, but I'd have to refresh 24 my memory. 25 Q. I am going to hand you, Ms. Sneath, what I will	1 Q. And the person who wrote it, if I pronounce the 2 name correctly, says Michael W. Lestingi. 3 L-e-s-t-i-n-g-i? 4 A. Right. 5 Q. Regional Administrator; correct? 6 A. Yes. 7 Q. Third paragraph. They state our number one 8 priority -- well, let me go back. The second 9 paragraph refers to the fact they investigated a 10 complaint. Do you know what the complaint was? 11 A. I believe it was the complaint that the road 12 was taken out. 13 Q. Okay. Let's look at the third paragraph of the 14 letter. It says, Our number one priority is the 15 safety of citizens and property throughout this 16 corridor. 17 Our investigator expressed his concerns 18 over the City of Ozark's tentative plans according to 19 a newspaper article in the SW Times to illegally 20 cross the tracks and clear brush south of the tracks. 21 Do you see that? 22 A. Uh-huh. 23 Q. I'm sorry. Is that a yes? 24 A. Yes. I'm sorry. 25 Q. That's okay. The letter continues by stating,

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1 He spoke to Ms. Sandy Key regarding this matter, and 2 she assured him that these plans have been erased, 3 period. 4 I echo his concerns and admonish you to 5 refrain from actions that would encourage or lead to 6 citizens trespassing in this corridor, period. This 7 is an active main line with 18 trains a day traveling 8 up to 50 miles per hour, period. 9 Do you see that? 10 A. Yes. 11 Q. The fourth paragraph says, Arkansas Highway and 12 Transportation Department indicated to our 13 investigator that they had received a crossing 14 inventory update form -- I think that should be 15 "from" -- Union Pacific in 2008 closing as private 16 crossing, period. 17 Do you see that? 18 A. Yes. 19 Q. And they say, A further look into our database 20 revealed that historically this crossing has been 21 identified as a public crossing on a city road with 22 private signs, period. This alone does not mean that 23 this crossing was a public crossing, period. 24 Do you see that? 25 A. Yes.	1 A. To the best of my recollection, yes. 2 Q. Okay. You don't remember a second vote that 3 became a five-to-one decision? 4 A. Uh. 5 Q. I believe there was an initial vote that was 6 three to three -- 7 A. Right. 8 Q. -- to determine whether or not -- 9 A. I guess that's the one that sticks in my mind 10 the most. 11 Q. All right. I believe at that time there was a 12 three-to-three vote to develop a committee to 13 determine if a lawsuit was viable. Do you remember 14 that? 15 A. Uh-huh. 16 Q. Is that a "yes"? 17 A. I don't recall at this time. 18 Q. Okay. That's fine. I believe the minutes 19 will -- 20 A. Will reflect that, yes. 21 Q. But there were two different votes? 22 A. Yeah. 23 Q. Okay. And I believe that you stated that 24 Gardner voted against it or voted for it? 25 A. Voted for it.
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1 Q. And then it continues by saying, I encourage 2 they City of Ozark to review the plat of land 3 immediately south of this crossing to determine 4 ownership, period. This could help properly identify 5 crossing DOT 434394 S as either public or private, 6 period. Is that right? 7 A. Yes. 8 Q. Okay. Ms. Sneath, have you understood the 9 questions that I have asked you here today? 10 A. Yes. 11 Q. Have I given you a fair and a full opportunity 12 to answer those questions? 13 A. Yes. 14 Q. Is there anything that you would like to add 15 before I stop my part of the deposition? 16 A. No. 17 Q. Ma'am, I thank you for your time. 18 A. Well, thank you. 19 MR. TUCKER: I pass. 20 EXAMINATION 21 BY MR. BROCKETT: 22 Q. I have just got a couple that I want to clarify 23 with you. On the three-to-three vote, do you know if 24 that was the only vote that was taken regarding 25 pursuing legal action against Union Pacific?	1 Q. I think it was actually the opposite, that 2 Roxie voted for it and that Gardner voted against it 3 originally? 4 A. Yes, yes. 5 Q. Okay. Now, are you aware of another crossing 6 that's close to the curve that we're referring to? 7 A. There's one down at the lock and dam. 8 Q. Okay. And do you know if pedestrians use that 9 crossing? 10 A. Pedestrians and vehicles. 11 Q. Vehicles, okay. Exhibit 83, could you hand 12 that to me? I believe you stated it was April of 13 2003. Okay. It should have been April 2013, okay, 14 because I had written down it was April of 2003. 15 A. Okay. 16 Q. Okay. You also stated, or you were asked if 17 you knew of any documentation regarding Oliver Street 18 or the crossing. 19 Have you seen a deed from approximately 20 1870 that relates to a crossing, that reserves upon 21 the residents of City of Ozark for a crossing? 22 A. Yes, I do recall that now, yes. 23 Q. And it was 60 foot right-of-way? 24 A. Yes. Yes. 25 MR. TUCKER: Let me object to the

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1 leading questions. 2 MR. BROCKETT: Okay. 3 BY MR. BROCKETT: 4 Q. Let's see, and then, finally, the fee 5 agreement. Do you -- it was stated that it was a 6 flat fee agreement. Do you remember exactly how that 7 agreement came about? The city -- did the city write 8 one \$20,000 check? 9 A. No. 10 Q. Okay. 11 A. No. We, we originally wrote a \$5,000 retainer, 12 and then the last was \$15,000. 13 Q. Okay. 14 A. I seem to recall something in, in the agreement 15 as to fees as a result of the retire -- if we would 16 win. 17 Q. Okay. And were costs in addition to this 18 20,000? 19 A. Yes. 20 MR. BROCKETT: Okay. That's all I 21 have. I just wanted to make sure that was 22 on the record. 23 EXAMINATION 24 BY MR. TUCKER: 25 Q. Ms. Sneath, just one question. You said there	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 26 JANESE FERGUSON SMITH, CCR, RPR 27 Notary Public for Saline County 28 and Court Reporter.
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1 is a crossing at the lock and dam, and that 2 pedestrians use it? 3 A. I know that there is traffic across it, yes, 4 both vehicle and... 5 Q. Is there one track or two tracks at that 6 location? 7 A. I think there is only one track. 8 Q. So that would be a different situation than the 9 crossing that Ozark wants to have here in town where 10 there are two tracks? 11 A. If there is only one track there. 12 Q. Okay. Because if there is only one track 13 there, the railroad can't store equipment on that 14 track and still run up and down that track? 15 A. Yes. 16 MR. TUCKER: Okay. That's all I have. 17 (The deposition was concluded at 11:17 a.m.) 18 19 20 21 22 23 24 25	