

Transcript of the Testimony of

Todd Timmerman

Date: February 12, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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City of Ozark v. Union Pacific Railroad Company

Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS VIDEOTAPED DEPOSITION OF TODD TIMMERMAN February 12, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Mr. Tucker 5 5 6 EXAMINATION 7 By Mr. Brockett. 28 8 9 E X H I B I T S 10 11 Exhibit No. 87 (Timmerman Notice). 11 12 13 14 15 16 17 18 19 20 21 22 23 24 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 9 ON BEHALF OF THE DEFENDANTS: 10 SCOTT H. TUCKER, ESQ. 11 JOSEPH P. MCKAY, ESQ. 12 Friday, Eldredge & Clark 13 400 West Capitol 14 Suite 2000 15 Little Rock, Arkansas 72201 16 17 also present: Bob Dunn 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF TODD TIMMERMAN. 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 2:59 p.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 TODD TIMMERMAN 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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501-372-5115

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1 THE VIDEOGRAPHER: We are on the audio 2 and video record. Today's date is February 3 the 12th, 2015. The approximate time is 4 2:59 p.m. 5 This is the video-recorded deposition 6 of Mr. Todd Timmerman. This deposition is 7 being taken at 401 Commercial Street, 8 Ozark, Arkansas. 9 Would the attorneys please make a 10 record of their appearance? 11 MR. BROCKETT: Christopher Brockett 12 for the Plaintiff. 13 MR. TUCKER: Scott Tucker and Joe 14 McKay on behalf of Union Pacific. 15 THE VIDEOGRAPHER: Would the reporter 16 please swear the witness? 17 TODD TIMMERMAN, 18 the witness hereinbefore named, having first been 19 duly cautioned and sworn or affirmed to tell the 20 truth, the whole truth and nothing but the truth, 21 testified as follows: 22 MR. BROCKETT: Same stipulation, 23 deposition by agreement of the parties, all 24 objections reserved except as to the form 25 of the question.	1 will, please do your best to wait until I finish the 2 question before you start to answer it. 3 A. Okay. 4 Q. Also, she can't take down nods of the head, so 5 if you nod your head up and down, I may say, Is that 6 a yes? I'm not trying to be rude, just trying to 7 make sure we have an accurate transcript. 8 A. Okay. 9 Q. By the same token, sometimes it's difficult to 10 tell in a transcript if you say "uh-huh" or "huh-uh," 11 so I may have to clarify, Was that a yes or a no? 12 A. Okay. 13 Q. Mr. Timmerman, let me have an agreement with 14 you, if you don't hear one of my questions, will you 15 please stop me and ask me to repeat it? 16 A. Yes, I will. 17 Q. If you don't, for any reason, you don't 18 understand one of my questions, will you please stop 19 me and ask me to rephrase it? 20 A. I will. 21 Q. Because we'll be relying on the answers that 22 you give today in preparation for the trial of the 23 case, and if you answer a question without asking me 24 to repeat it or rephrase it, I'm going to take it 25 that you heard the question and understood the
Page 6	Page 8
1 MR. TUCKER: And responsiveness of the 2 answer, yes. 3 EXAMINATION 4 BY MR. TUCKER: 5 Q. Good afternoon. 6 A. Hi. 7 Q. Will you please state your full name? 8 A. Todd Timmerman. 9 Q. Mr. Timmerman, my name is Scott Tucker. I'm 10 one of the lawyers for the railroad in a case styled 11 City of Ozark versus Union Pacific Railroad Company. 12 I'm here to take your deposition today 13 because the Plaintiff's counsel, Mr. Brockett, listed 14 you as a possible witness in this case. Do you 15 understand that? 16 A. Yes, sir. 17 Q. All right. Have you ever given a deposition 18 before? 19 A. I don't believe so. 20 Q. Well, let me go over just a few ground rules 21 with you. The court reporter is taking down 22 everything we say verbatim, so she can't take both of 23 us down if we talk at the same time. 24 I'll do my best to let you finish answering 25 a question before I ask you another one, and if you	1 question. Is that fair? 2 A. Yes, sir. 3 Q. All right. Are you on any medications today 4 that would affect your ability to give truthful and 5 accurate answers to the questions that are asked of 6 you? 7 A. No. 8 Q. Mr. Timmerman, if at any time you realize you 9 gave an incorrect answer to a previous question, 10 regardless of whether it was long in the past and 11 regardless of whether you think it may have been 12 insignificant, will you please stop me and make a 13 correction while we are on the record? 14 A. Yes. 15 Q. All right. I don't think we will be going real 16 long today, but this is not an endurance contest. If 17 at any time you want to take a break for any reason, 18 just let me know, and we'll take a short break. 19 A. Okay. 20 Q. Do you have any questions about the process 21 before we get started? 22 A. No. 23 Q. What is your date of birth, please, sir? 24 A. January 1st, 1968. 25 Q. How old does that make you?

2 (Pages 5 to 8)

Page 9 1 A. Forty-seven. 2 Q. Where were you born? 3 A. Mountain Home, Arkansas. 4 Q. And how old were you when you moved to Ozark? 5 A. Two. Roughly. 6 Q. Did you graduate from high school in Ozark? 7 A. I did. 8 Q. What year? 9 A. 1986. 10 Q. Do you have any post-high school education? 11 A. Yes. 12 Q. What's that? 13 A. A bachelor of science in marketing and 14 management from the University of Arkansas. 15 Q. At Fayetteville? 16 A. Yes. 17 Q. What year did you graduate? 18 A. 1991. 19 Q. Are you currently employed? 20 A. Yes. 21 Q. Where do you work? 22 A. Midwest Injection out of Cascade, Iowa. 23 Q. And tell me what type of work you do. 24 A. We are a bio solids removal and land 25 application company.	Page 11 1 Q. Let me pass to you what I have marked for 2 identification as a Notice of Deposition. 3 (Exhibit No. 87 was marked.) 4 BY MR. TUCKER: 5 Q. That is Exhibit Number 87, which directed you 6 to be here at Mr. Brockett's law office today at 7 three p.m., and you're here; right? 8 A. Yes, I am. 9 Q. Okay. Turn to the next to last page of that 10 deposition notice, if you would. At the top of the 11 page it says Exhibit A. Do you see that? 12 A. Yes, sir. 13 Q. Let's -- by the way, have you seen this Notice 14 of Deposition before? 15 A. Yes. 16 Q. What I'd like to do, Mr. Timmerman, is just ask 17 if you have any of the documents that are included in 18 that subheading there toward the bottom called 19 Document Demand. Do you see paragraph one? 20 A. Yes. 21 Q. I'll read it, if you will read along with me. 22 It says, Please produce a copy of all documents, 23 correspondence, email, reports that you have sent or 24 received from Union Pacific Railroad Company or any 25 representative of UP regarding the removal or
Page 10 1 Q. Will you say that one more time? 2 A. A bio solids, wastewater, water removal, and 3 land application. 4 Q. How long have you worked for them? 5 A. Going on four years. 6 Q. If you were born in '68, I take it your family 7 moved to Ozark when you were, sorry, in about 1970? 8 A. Yes. 9 Q. And you lived in Ozark continuously over the 10 next 16 years from 1970 to 1986? 11 A. Yes. 12 Q. Was there another time that after you got out 13 of college that you lived in Ozark? 14 A. I have -- well, I have lived in Altus for a 15 couple of years, which is right down the road. Other 16 than that, I'm an Ozark guy. 17 Q. Let me ask you, too, this way, when you got out 18 of Fayetteville in 1991 where did you move to? 19 A. Ozark. 20 Q. And where do you currently live? 21 A. Ozark. 22 Q. What is your street address? 23 A. 3911 West Commercial. 24 Q. How long have you lived there? 25 A. Two years, approximately.	Page 12 1 installation of a crossing in Ozark, Arkansas. 2 . Do you see that? 3 A. Yes. 4 Q. Would you have any items, Mr. Timmerman, that 5 would fall under paragraph number one? 6 A. No. 7 Q. Turn the page, please, sir. If you will read 8 along with me, paragraph two says, Please produce a 9 copy of all documents, correspondence, email, reports 10 that you have sent or received from Union Pacific 11 Railroad Company or any representative of UP 12 regarding access to city property. 13 Mr. Timmerman, would you have any items 14 that would fall under paragraph two? 15 A. No. 16 Q. Number three says, Please produce a copy of all 17 documents, correspondence, email, reports that you 18 have sent or received regarding the removal or 19 installation of a crossing in Ozark, Arkansas. 20 Would you have any items that would fall 21 under paragraph three? 22 A. No. 23 Q. Number four says, Please produce any diaries, 24 notes, or calendars you have kept or created 25 regarding any efforts to seek a crossing in Ozark,

3 (Pages 9 to 12)

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1 Arkansas.

2 Would you have any documents that would

3 fall under paragraph four?

4 **A. No, sir.**

5 Q. Okay. Number five says, Please produce any

6 diaries, notes, or calendars you have kept or created

7 regarding any contact with UP or its representatives.

8 Mr. Timmerman, would you have any items

9 that would fall under paragraph five?

10 **A. No.**

11 Q. Number six says, Please produce all diaries,

12 notes, or calendars you have from any council

13 meetings regarding the removal or installation of a

14 crossing in Ozark, Arkansas.

15 Would you have any such items as requested

16 in number six?

17 **A. No.**

18 Q. All right. Have you ever served on the Ozark

19 city council?

20 **A. No.**

21 Q. I believe you have served as Mayor of Ozark; is

22 that correct?

23 **A. That is correct.**

24 Q. What years were you Mayor of Ozark?

25 **A. 1999 through 2003.**

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1 Q. And I'm guessing you were elected rather than

2 appointed?

3 **A. Correct.**

4 Q. Let's go back to when you were growing up in

5 Ozark, and then we will come back to when you were

6 mayor. You lived in Ozark from 1970 to 1986 before

7 you went to college?

8 **A. Correct.**

9 Q. Are you familiar with a road approximately 100,

10 200 yards to the east of the train depot that went

11 across the tracks?

12 **A. Am I familiar?**

13 Q. Were you at the time when you were growing up?

14 **A. Honestly, I'm sure I knew about it, but I don't**

15 **know for sure.**

16 Q. Do you recall any street signs being posted on

17 that road?

18 **A. No, I don't recall it.**

19 Q. I think the road was a dirt road. Does that

20 sound correct to you?

21 **A. What I remember of that was a trail going back**

22 **in there, and if I remember right, there used to be**

23 **some propane tanks or something along those lines.**

24 Q. Yes, sir. Did you ever use that road to go

25 across the tracks, and -- going south toward the

Page 15

1 river?

2 **A. No.**

3 Q. Did that road have a name, that you recall?

4 **A. No.**

5 Q. You returned to Ozark, did you say in 1991?

6 **A. Yes.**

7 Q. Had that road that went over the tracks to the

8 propane tanks, had it changed at all?

9 **A. Not that I'm aware of.**

10 Q. Still no street sign?

11 **A. Not that I'm aware of. I mean, I couldn't**

12 **honestly tell you the truth. I don't really know.**

13 Q. That's all right. Did you -- after you

14 returned to Ozark from college did you ever use that

15 road for any reason?

16 **A. No.**

17 Q. The Complaint in this case refers to an Oliver

18 Street. Did you ever hear that road referred to as

19 Oliver Street?

20 **A. I've heard of Oliver Street, but I don't**

21 **remember that road being Oliver Street.**

22 Q. Where do you recall a road that you heard

23 referred to as Oliver Street?

24 **A. I'm trying to remember. I believe what Church**

25 **Drive is now at one point was considered Oliver**

Page 16

1 **Street.**

2 Q. Do you know back when that was?

3 **A. During the nineties.**

4 Q. River Road, is that the road that runs east and

5 west in front of the post office?

6 **A. River Street.**

7 Q. River Street?

8 **A. Yes.**

9 Q. Is there a Water Street anywhere in --

10 **A. Water Street?**

11 Q. Yes, sir.

12 **A. No.**

13 Q. Okay. Other than this dirt road that goes

14 across the tracks, other than it going to some

15 propane tanks, do you recall if it went anywhere

16 else?

17 **A. No.**

18 Q. I'm going to hand you what's been marked as

19 Exhibit Number 20 to a previous deposition. It's an

20 affidavit of Charlie Felkins who is now retired from

21 Union Pacific Railroad. Do you remember Mr. Felkins?

22 **A. The name's familiar.**

23 Q. Okay. Let's go off the record for just a

24 moment. It's a two-page affidavit, if you will read

25 that, please, sir.

4 (Pages 13 to 16)

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1 THE VIDEOGRAPHER: We are going off 2 the record. It's 3:11 p.m. 3 (Short break.) 4 THE VIDEOGRAPHER: We are back on the 5 record. It's 3:12 p.m. 6 BY MR. TUCKER: 7 Q. Have you had a chance, Mr. Timmerman, to look 8 at Exhibit 20, which is Charlie Felkins' affidavit? 9 A. I have. 10 Q. Okay. Let's look at paragraph two. The 11 affidavit states. In approximately 2000 an individual 12 living near the depot in downtown Ozark called me 13 several times to complain, sometimes angrily, about 14 the fact that the trains blew their whistles as they 15 approached the crossing immediately south of the 16 depot. 17 This gentleman complained that no one used 18 the cross and asked the railroad to remove the 19 crossing. 20 Did, did this person complaining about, to 21 Charlie Felkins about trains blowing their whistles 22 as they approached the crossing, did that person ever 23 complain to you? 24 A. A person -- well, probably two or three people 25 complained to me. I'm not sure if it's the same one.	1 And part of the other end of that was 2 removing the crossing, which we wanted because of the 3 complaints. We also felt like that the railroad 4 wanted that as well, and I think it was kind of a 5 consistent tradeoff between the two. 6 Q. Okay. If I understand what you're telling me, 7 the city wanted the crossing out, but you knew the 8 railroad did, too? 9 A. Correct. 10 Q. And so you said to Charlie Felkins, Would y'all 11 remove the crossing, and oh, by the way, why don't 12 you deed us the depot as part of the deal? 13 A. Correct. 14 Q. And the crossing was removed, I believe, in 15 2001? 16 A. I'm -- I as -- I saw that in here. I'm not 17 really positive. 18 Q. Would it -- 19 A. It was in that timeframe. 20 Q. Okay. While you were mayor? 21 A. Correct. 22 Q. And while you were mayor was that when Union 23 Pacific deeded the depot to the City of Ozark? 24 A. Correct. 25 Q. All right. Did you ever have communications
Page 18	Page 20
1 Q. Okay. Who, who were the people who complained 2 that to you about the trains blowing the horns? 3 A. I've tried to think of their names, but I 4 cannot recall. 5 Q. Okay. Paragraph three says, Shortly after 6 these complaints I received a call from the Mayor of 7 Ozark. I believe his name was Todd Timmerman. The 8 mayor reiterated the complaints from the previous 9 gentleman and stated that no one used the crossing 10 and requested that the railroad remove the crossing. 11 Do you see that? 12 A. Yes. 13 Q. Do you recall having that conversation with 14 Charlie Felkins asking him to remove the crossing 15 there just to the east of the depot? 16 A. Yeah. That was part of the conversation we 17 had. 18 Q. Okay. Tell me about the rest of it. 19 A. Well, it also involved the depot. At that time 20 prior administration had reached some sort of an 21 agreement with the railroad to lease the depot, and 22 part of the process of removing the crossing was also 23 the railroad deeding the depot to the city, which the 24 railroad did do. They deeded that to the City of 25 Ozark.	1 with anybody at Union Pacific, other than Charlie 2 Felkins, about taking the crossing out or about 3 donating the depot, that you can recall? 4 A. Not that I can recall. I believe I -- and the 5 name Charles Felkins, Charlie Felkins, is familiar to 6 me, and we talked on several instances. 7 Q. Let me hand you -- I will put that back in the 8 exhibit stack. I am going to hand you, 9 Mr. Timmerman, some minutes from a city council 10 meeting that were, that was held in January of 2014, 11 and ask you to turn to page 17. 12 Now we had, we got an audio tape of the 13 city council meeting and had it transcribed, and then 14 Sandy Key wrote who the speakers were, because we 15 didn't know the voices. Do you know Ms. Key? 16 A. Yes. I'm sorry. 17 Q. That's fine. I believe she is Executive 18 Director of Main Street Ozark? 19 A. Correct. 20 Q. Have you ever served on Main Street Ozark? 21 A. I was on the Board. 22 Q. Was that in your capacity as mayor? 23 A. Yes. 24 Q. I think that's -- they called it an ex-officio 25 position?

5 (Pages 17 to 20)

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Page 21 1 A. Correct. 2 Q. All right. Do you see down at the bottom of 3 the page 17 where it says McNutt? 4 A. Yes. 5 Q. It's handwritten? 6 A. Yes. 7 Q. I'll, I'll read that into the record. It says, 8 Todd Timmerman put in a letter to the council down at 9 the other place, and it's a courtesy letter from the 10 railroad to say they were closing that, and about 11 that time we requested it be a quiet zone, and they 12 took the cross arms out. 13 Mr. McNutt has already testified about a 14 city council meeting and apparently some letter from 15 the railroad saying they were going to take Oliver, 16 the Oliver -- well, not Oliver Street, whatever the 17 crossing was to the east of the depot. Do you, do 18 you recall having such a letter from the railroad? 19 A. I mean, we had several lines of correspondence 20 and, honestly, I don't remember exactly what -- there 21 was paperwork, and I did present that to the council, 22 probably not in a normal fashion. 23 And the people can testify to the way I ran 24 the city was a little different probably than most 25 mayors have.	Page 23 1 council members object to that, that you can recall? 2 A. No. 3 Q. Do you remember any talk as now Mayor McNutt 4 said in that council meeting that you have in front 5 of you, any talk about a quiet zone in this area? 6 A. I don't recall that. 7 Q. Okay. And then Mr. McNutt said, Todd Timmerman 8 put in a letter to the council down at the other 9 place. Is -- when he said "the other place" was that 10 a different place that y'all were having council 11 meetings than maybe where they are today? 12 A. City Hall was a different location when I was 13 mayor. 14 Q. Mr. Timmerman, has anyone -- strike that. 15 After Union Pacific came and took the crossing out, 16 while you were mayor did anybody come and complain to 17 you that the railroad had taken the crossing out? 18 A. No. 19 Q. Or did anyone say that you or the railroad had 20 taken the crossing out illegally or without proper 21 authority? 22 A. No. 23 Q. After you were no longer mayor has anyone 24 complained to you about the crossing being taken out? 25 A. No.
Page 22 1 Q. I can tell you what Mr. McNutt told us, and 2 this may refresh your recollection. He said the 3 meeting may have even been adjourned, but before 4 everybody left you said, I've got a letter here from 5 the railroad. They're going to take the, that 6 crossing out and the crossbuck signs. Those are 7 going to come out. 8 A. I would think that's consistent. I mean, I, I 9 talked to quite a few people about that. In fact, at 10 that time one of the first complaints I got was 11 actually on the radio. 12 I did a radio call-in show every two weeks. 13 Between that and phone calls to the office, that's 14 where the complaints came to me. 15 Q. The complaints about trains blowing their 16 horns -- 17 A. The sounding, yes. 18 Q. -- going through town? 19 A. At council meeting I couldn't begin to tell you 20 if I actually brought it up, but I'm sure I did. I 21 brought most things up. Sometimes I did it before I 22 brought it up, and sometimes I did it after I brought 23 it up, but I brought it up usually. 24 Q. When you told the council that the railroad was 25 going to remove the only crossing in town, did any	Page 24 1 Q. Or has anyone said to you that you and/or the 2 railroad took the crossing out illegally or without 3 proper authorization? 4 A. No. 5 Q. Did you tell the Plaintiff's lawyer in this 6 case, Mr. Brockett, about the fact that you asked the 7 crossing to be taken out? 8 A. Say that again now. 9 Q. Did you tell Mr. Brockett after this lawsuit 10 started or maybe even before that you had asked the 11 railroad to take the crossing out? 12 A. Yes, I told Chris that. 13 Q. Okay. Do you recall about when that was? 14 A. Summertime. 15 Q. Of 2014? 16 A. Yes. 17 Q. Okay. Anybody present during that 18 conversation? 19 A. No. 20 Q. Do you believe that when you asked Union 21 Pacific to take the crossing out that you had the 22 authority to ask them to take it out? 23 A. Yes. 24 Q. And was that as in your elected position as 25 Mayor of the City of Ozark?

6 (Pages 21 to 24)

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1 **A. Yes.**
 2 Q. Would Union Pacific have any reason to question
 3 whether or not it could rely on what you were telling
 4 them, take the crossing out, and they took it out?
 5 **A. No.**
 6 Q. I take it you were the voice from the City of
 7 Ozark to the railroad?
 8 **A. Correct.**
 9 Q. Mr. Timmerman, let me run through a series of
 10 questions about the road that went across the tracks
 11 just to the east of the depot. The city now calls
 12 that Oliver Street.
 13 At any time before, say, the last two years
 14 had you ever heard that road referred to as Oliver
 15 Street?
 16 **A. In the last two years since when?**
 17 Q. From, from today. I know the city now calls it
 18 Oliver Street, but, say, two or three years ago and
 19 before that had you ever heard it referred to as
 20 Oliver Street?
 21 **A. Prior to this situation y'all are in now I have**
 22 **not heard that.**
 23 Q. Okay. I'm going to call it Oliver Street just
 24 because that's what the city calls it for this series
 25 of questions.

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1 **A. Okay.**
 2 Q. And I think I know the answer to it, but I
 3 just, on the record, need to hear it from you. Are
 4 you aware of any written documentation that shows
 5 that Oliver Street was ever dedicated as a city
 6 street?
 7 **A. No.**
 8 Q. Are you aware of any written documentation that
 9 shows a crossing at the location that Ozark wants in
 10 this lawsuit was ever dedicated as a city crossing?
 11 **A. No.**
 12 Q. Are you aware of any documentation that shows
 13 that any crossing in the City of Ozark was ever
 14 dedicated as a city crossing?
 15 **A. No.**
 16 Q. Are you aware of any recorded plat purporting
 17 to dedicate Oliver Street for a public use?
 18 **A. No.**
 19 Q. Or the Oliver Street crossing for a public use?
 20 **A. No.**
 21 Q. Are you aware of any ordinance accepting a
 22 recorded plat dedicating Oliver Street to a public
 23 use?
 24 **A. No.**
 25 Q. Or an Oliver Street crossing to a public use?

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1 **A. No.**
 2 Q. Are you aware of any ordinance by the city
 3 establishing a right-of-way for Oliver Street?
 4 **A. Not at that location, no.**
 5 Q. Or an Oliver Street crossing at that location?
 6 **A. No.**
 7 Q. There's no record of which you are aware of the
 8 city condemning Oliver Street for a public use; is
 9 there?
 10 **A. Not that I'm aware of.**
 11 Q. The city's never initiated condemnation
 12 proceedings for the purpose of establishing a
 13 right-of-way for an Oliver Street crossing at that
 14 location?
 15 **A. Not that I'm aware of.**
 16 Q. There's no recorded easement or other
 17 instrument that you're aware of granting the city the
 18 right to cross Union Pacific's right-of-way at that
 19 location?
 20 **A. Not that I'm aware of.**
 21 Q. And are you aware of any funds, city funds that
 22 were used for the purpose of maintaining Oliver
 23 Street since 1975?
 24 **A. Not during my administration.**
 25 Q. You never directed the city roadway workers to

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1 go out there and work on that road that goes over the
 2 tracks east of the depot?
 3 **A. No.**
 4 Q. Do you know who it was that constructed that
 5 road?
 6 **A. No.**
 7 Q. Or that crossing?
 8 **A. No.**
 9 Q. Mr. Timmerman, have you understood the
 10 questions that I have asked you here today?
 11 **A. Yes.**
 12 Q. Have I given you a full and a fair opportunity
 13 to answer those questions?
 14 **A. Yes.**
 15 MR. TUCKER: I thank you for your
 16 time, and I pass.
 17 EXAMINATION
 18 BY MR. BROCKETT:
 19 Q. I just have one question, Todd. During your
 20 four years as mayor did you close any city streets?
 21 **A. I don't believe so.**
 22 Q. Okay. Do you know the process for closing a
 23 city street or alleyway?
 24 **A. Yes.**
 25 Q. Do you? Okay. What is that process?

7 (Pages 25 to 28)

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1 **A. We would be taking it in front of council or in**
 2 **front of the -- the attorney's office would have**
 3 **handled that for us at that time.**

4 Q. And council would have had to vote for it?

5 **A. I'm sorry?**

6 Q. Would council have voted for the closure?

7 **A. Oh definitely, yes.**

8 MR. BROCKETT: Okay. That's all I
 9 have.

10 MR. TUCKER: We will reserve the
 11 balance of ours. Mr. Timmerman, thank you
 12 for your time.

13 THE WITNESS: Oh, you bet.

14 THE VIDEOGRAPHER: This concludes the
 15 deposition. We are off the record at
 16 3:25 p.m.

17 (The deposition was concluded at 3:25 p.m.)
 18
 19
 20
 21
 22
 23
 24
 25

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1 COURT REPORTER'S CERTIFICATE

2 STATE OF ARKANSAS)

)ss.

3 COUNTY OF SALINE)

4 I, JANESE FERGUSON SMITH, CCR, RPR, a
 5 Notary Public in and for Saline County, Arkansas do
 6 hereby certify that the facts stated by me in the
 7 caption of the foregoing matter are true; and that
 8 the foregoing matter was transcribed by me, to the
 9 best of my ability and understanding, from my machine
 10 shorthand notes taken at the time and place set out
 11 in the caption hereto.

12 In accordance with Rule 30(e) of the
 13 Rules of Civil Procedure, review of the transcript
 14 was waived by the deponent or a party thereto.

15 I FURTHER CERTIFY that I am neither
 16 counsel for, related to, nor employed by any of the
 17 parties to the action in which this proceeding was
 18 taken; and, further that I am not a relative or
 19 employee of any attorney or counsel employed by the
 20 parties hereto, not financially interested or
 21 otherwise, in the outcome of this action.

22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
 23 this, the 12th day of February, 2015.

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

8 (Pages 29 to 30)



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 867
LITTLE ROCK, ARKANSAS 72203-0867
www.swl.usace.army.mil/

March 30, 2015

Mayor Tommy R. McNutt
City of Ozark
2910 West Commercial
Ozark, Arkansas 72949

Dear Mayor McNutt:

I am writing you in reference to the City of Ozark's request to place a marina on the south side of the Arkansas River adjacent to Aux Arc Park. After a very thorough review and numerous discussions with your representatives since June 2014, your request for a marina at this location is denied.

This final decision includes information received during this past fall, winter, and in emails dated March 17, 18 and 25, 2015 from several city representatives. In my letter dated August 28, 2014 and email dated September 3, 2014 to the City of Ozark's Mayor Carol Sneath and Ms. Sandy Key, I made it clear that the Feasibility Study, Environmental Assessment and Business Plan did not provide convincing arguments that a marina near Ozark would be viable. Since this time, we have continued to discuss the required supporting documentation, but the City has not been able to provide a convincing argument that there is a sufficient demand and business plan for a marina. The Corps does not see a marina being viable on this portion of the Arkansas River in the foreseeable future.

In regards to a separate issue, we will work with the City of Ozark regarding the temporary boat mooring facilities on the north side of the Arkansas River, adjacent to the City of Ozark after the City of Ozark resolves the access issues with Union Pacific Railroad.

If you have additional questions, or need further assistance please contact me at 501-324-5053 or Randy.J.Hathaway@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Hathaway", is written over a horizontal line.

Randy Hathaway, PhD, PE
Deputy District Engineer

Transcript of the Testimony of

Mary Gilmer

Date: March 10, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

Janess Ferguson Smith

Phone: (501) 372-5115

Fax: (501) 378-0077

[<www.bushmanreporting.com>](http://www.bushmanreporting.com)

Mary Gilmer 3/10/2015

City of Ozark v. Union Pacific Railroad Company

Page 1 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 MARY FRANCES GILBERT March 10, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Ms. Jones 5 5 6 EXAMINATION 7 By Mr. Brockett. 13 8 9 EXAMINATION 10 By Ms. Jones 20 11 12 13 14 15 16 17 18 19 20 21 22 23 24 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 9 ON BEHALF OF THE DEFENDANTS: 10 JAMIE JONES, ESQ. 11 Friday, Eldredge & Clark 12 400 West Capitol 13 Suite 2000 14 Little Rock, Arkansas 72201 15 16 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF MARY FRANCES 2 GILBERT, a witness produced at the request of the 3 Defendants, was taken in the above-styled and 4 numbered cause on the 10th day of March, 2015, before 5 Janess Ferguson Smith, Certified Court Reporter and 6 Notary Public in and for Saline County, Arkansas, at 7 the Offices of Sayre & Brockett, 401 West Commercial 8 Street, Ozark, Arkansas, at 12:30 p.m. 9 10 11 * * * * * 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of MARY FRANCES GILBERT may be taken for 17 any and all purposes according to the Federal Rules 18 of Civil Procedure. 19 * * * * * 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Page 5

1 MARY FRANCES GILMER,
2 the witness hereinbefore named, having first been
3 duly cautioned and sworn or affirmed to tell the
4 truth, the whole truth and nothing but the truth,
5 testified as follows:
6 EXAMINATION
7 BY MS. JONES:
8 Q. Ma'am, can you go ahead and state your name?
9 A. **Mary Frances Gilmer.**
10 Q. Ms. Gilmer, my name is Jamie Jones, and I
11 represent Union Pacific Railroad Company in the
12 lawsuit that has been filed against it by the city.
13 You have been named as a fact witness by
14 the city, which is what leads us here today. Have
15 you ever given a deposition before?
16 A. **No, I haven't.**
17 Q. Okay. I am going to go through a little bit of
18 the ground rules so that you and I are on the same
19 page.
20 Ms. Janess is taking down everything that
21 we say today. She is a court reporter. She has
22 sworn you in, so your testimony is under oath, just
23 as if a judge was sitting in here. Do you understand
24 that?
25 A. **Uh-huh.**

Page 6

1 Q. Okay. And the -- one of the first rules is
2 going to be that she can't get down nonverbal
3 responses, so I understood when you say "uh-huh" just
4 now that you meant yes, but she can't get that down
5 for the record. So I am going to need you to
6 verbalize for me; okay?
7 A. **All right.**
8 Q. And you are going to forget that at some point
9 because every witness sitting there does, and I am
10 going to remind you. And I am not being rude. I
11 just want us to make sure we have a clear record
12 okay?
13 A. **That's fine.**
14 Q. And the second thing is she can't get us both
15 speaking at the same time. So you may well
16 anticipate where I am headed with the question, but
17 if you will allow me to get my question out, I will
18 allow you to get your answer out to me; okay?
19 A. **That's fine.**
20 Q. And if I ask a question that you don't
21 understand, you're not the only person in the room.
22 It's just a bad question. If you will ask me to
23 rephrase it for you, I will rephrase it until it's
24 understandable; okay?
25 A. **I left my hearing aids at home this morning,**

Page 7

1 **too.**
2 Q. Okay. So if you can't hear me, let me know.
3 A. **Okay.**
4 Q. And I will speak up; okay?
5 A. **That would be fine.**
6 Q. All right. And if you need a break at any
7 point, you let me know, and we will take one. All
8 right?
9 A. **All right.**
10 Q. Can you give us your date of birth?
11 A. **7-16-1928.**
12 Q. Okay. And that makes you how old of a woman?
13 A. **I am 86.**
14 Q. Okay. I need to know what they, what is in the
15 water in Ozark, because people keep coming in here
16 and telling me they are in their eighties, but I
17 don't believe you. So I need to get some of that
18 water. Can you give me your address?
19 A. **409 West River Street, Ozark.**
20 Q. Okay. And can you give me the best phone
21 number to reach you if I needed to talk with you?
22 A. **209-0669.**
23 Q. Okay. And how long have you lived in Ozark or
24 the Ozark area?
25 A. **Well, actually I moved to Ozark on a permanent**

Page 8

1 **basis in June of 1946.**
2 Q. Okay.
3 A. **But I had family here, and I spent a lot of**
4 **time visiting in Ozark. In fact, I went to**
5 **elementary school for two years because I had to live**
6 **here while my dad was sick and going to Memphis to**
7 **the hospital.**
8 Q. Okay. Did you graduate from high school?
9 A. **Yes, in Pine Bluff.**
10 Q. Okay. What year was that?
11 A. **1946.**
12 Q. Okay. Did you go to any post education after
13 high school?
14 A. **No.**
15 Q. Okay.
16 A. **I did not.**
17 Q. Did you work outside the home?
18 A. **Yes.**
19 Q. And what did you do?
20 A. **You mean now or when I finished school?**
21 Q. When you finished school. You can kind of give
22 me sort of the synopsis of what you did for a living.
23 A. **Okay. I came to Ozark as soon as I finished**
24 **high school, and I had several little jobs with Ben**
25 **Franklin Store, for one.**

Page 9 1 Q. Uh-huh. 2 A. And for Burns Drug Store with another. And 3 then I went to work for the telephone company. 4 Q. Okay. 5 A. And I don't remember the name of the company at 6 that time, but it has been handed down since then. 7 Q. Okay. 8 A. So basically it's the same place. 9 Q. Now, is that where you kind of spent your 10 working career, is with the telephone company? 11 A. Oh, no. After that I went to work for Arkansas 12 Valley Electric, and I worked there for several 13 years, and -- well, really until 1956 when my first 14 little girl was born. 15 And whenever I was ready to go back to 16 work, I couldn't go for Arkansas Valley because my 17 husband worked there. 18 So I didn't work for a while, and then they 19 told me there was an opening at U.S. Forest Service. 20 So I went to work for them, and I worked for them for 21 26 years. And I retired in -- gosh, I can't 22 remember. It seems like it was '77, but I'm not 23 certain. 24 Q. Okay. Do you remember about what year you 25 worked for the telephone company?	Page 11 1 certain documents, if you had any. Would you have 2 had any documents? 3 A. I had nothing. 4 Q. Okay. Thank you for checking that for me. I 5 appreciate it. One of the issues in this lawsuit 6 involves a crossing that had been located east of the 7 depot in downtown Ozark. Are you familiar with a 8 crossing at that location? 9 A. No, I'm not. 10 Q. Okay. Have you ever used a crossing, let's 11 say, to go to the dump or anything? 12 A. Well, they were talking about making a walking 13 trail around -- 14 Q. Okay. 15 A. -- down there, and some of the girls from Main 16 Street Arkansas were here, and they invited me to go 17 on the walk with them. So I did go on the walk, 18 but... 19 Q. Okay. But you had never actually used a 20 crossing? 21 A. No. 22 Q. Okay. So, you are not familiar and couldn't 23 speak to any crossing? 24 A. (Witness shakes head.) 25 Q. And --
Page 10 1 A. Let's see. I guess I went to work for the 2 telephone company in 1948. 3 Q. Okay. And do you know about how long you were 4 there? 5 A. I didn't work for them too awfully long. 6 Q. Okay. 7 A. Because I had a chance at a better job with 8 Arkansas Valley. 9 Q. Do you remember about what year -- I know you 10 said you left them about 1956. Do you remember what 11 year you started? 12 A. No, I don't. 13 Q. That's fine. Okay. Have you ever been on the 14 city council? 15 A. Pardon me? 16 Q. Have you ever been on the Ozark city council? 17 A. No. 18 Q. Okay. Have you ever been involved in an 19 organization called Main Street Ozark? 20 A. Well, my husband was manager there for a while, 21 but I had nothing to do with it. 22 Q. Okay. And what is your husband's name? 23 A. James Hugh Gilmer. 24 Q. Okay. And I know we sent a subpoena over to 25 you for you to be here today, and we asked for	Page 12 1 A. No. 2 Q. And are you -- have you ever been -- let's see, 3 prior to the last few years when this lawsuit started 4 getting attention, prior to that, had you ever heard 5 of a street called Oliver Street? 6 A. No, I hadn't. 7 Q. Okay. All right. So you went on a walk with 8 some of the ladies from Main Street Ozark. Can you 9 tell me who you went with? 10 A. It was Main Street Arkansas. 11 Q. Main Street Arkansas? 12 A. Yes. I believe Sandra Hanson (phonetic) was 13 with us, and -- and I can't remember whether -- there 14 has been so many different ones work for Main Street 15 Arkansas. 16 They would come up, and James usually would 17 take them to lunch, and they would always invite me 18 to go with them, so. 19 Q. Okay. But do you have any firsthand knowledge 20 of what any plans are for any biking or hiking trails 21 in downtown Ozark? 22 A. No. 23 Q. Okay. 24 A. The only ones that I know about are the ones 25 that have already been built.

3 (Pages 9 to 12)

Page 13

1 Q. Okay. All right.
 2 **A. And I don't think there is any down that way.**
 3 Q. All right.
 4 MS. JONES: Well, ma'am, I thank you
 5 for your time, and I appreciate it.
 6 Mr. Brockett may have some questions for
 7 you. I'm not sure.
 8 EXAMINATION
 9 BY MR. BROCKETT:
 10 Q. Where do you currently reside? Are you on, in
 11 the little brick house over here?
 12 **A. No. I live in the white house across the**
 13 **street from the rock house.**
 14 Q. Okay. Did your -- did your son-in-law used to
 15 live by the railroad tracks?
 16 **A. Uh-huh.**
 17 Q. Okay. Is that the house that you are currently
 18 in?
 19 **A. Yes.**
 20 Q. Okay.
 21 **A. When they bought their home out in west Ozark**
 22 **I -- my husband had passed away by then. And my**
 23 **house was too big for one person, so I moved over**
 24 **here.**
 25 Q. Okay.

Page 14

1 **A. This was home anyway.**
 2 Q. Okay. And I apologize for being a little
 3 confused, because my understanding was you had used
 4 the crossing, and you had knowledge about what was
 5 down in that area. Perhaps they listed you for a
 6 different reason. Were you in this area during 2001?
 7 **A. Oh yeah.**
 8 Q. Okay. Were you residing in that house during
 9 2001?
 10 **A. No. I moved over there in 2004.**
 11 Q. Okay. Did you visit your son-in-law and
 12 daughter over there?
 13 **A. Oh yeah.**
 14 Q. Okay.
 15 **A. Probably every day.**
 16 Q. Okay. I would like to focus on a period of,
 17 say, '99 through 2001?
 18 **A. Uh-huh.**
 19 Q. Are you aware of a dispute that, perhaps, your
 20 son-in-law had with the city or the railroad about
 21 train horns?
 22 **A. Oh yeah. They upset his sleep.**
 23 Q. Okay. All right. Do you know if -- and what
 24 is your son-in-law's name?
 25 **A. Scott James.**

Page 15

1 Q. Scott James. Okay. Okay. Can you briefly
 2 kind of explain what actions he took?
 3 MS. JONES: Object to form and
 4 foundation.
 5 **A. All I know is he just griped about it all of**
 6 **the time, and I think he finally wrote a letter --**
 7 Q. Okay.
 8 **A. -- or may have called them. I don't know.**
 9 Q. Okay. And wrote a letter or called who?
 10 **A. The railroad.**
 11 Q. Okay. So you think he contacted the railroad?
 12 **A. (Witness nods head.)**
 13 Q. Do you know if he contacted the city council of
 14 Ozark?
 15 **A. He contacted the mayor. I don't know whether**
 16 **he talked to city council or not.**
 17 Q. Okay. And would that have -- would that have
 18 been Todd Timmerman? Does that sound familiar?
 19 **A. I don't know whether it would have been Todd or**
 20 **not. I had forgotten he was the mayor.**
 21 Q. That's fine. Do you know if anything was
 22 resolved on that, or did your son-in-law finally just
 23 move?
 24 **A. Well, I don't think there was ever anything**
 25 **resolved because he still -- if he is over at my**

Page 16

1 **house he says, There goes that damn train again.**
 2 Q. Okay. So to your knowledge, the horns never
 3 stopped blowing?
 4 **A. No, they didn't, and they are still blowing.**
 5 Q. Okay.
 6 **A. Of course, they don't bother me. I was raised**
 7 **that close to the railroad. My dad worked for the**
 8 **Cotton Belt.**
 9 Q. Okay.
 10 **A. And so I was raised with, with train --**
 11 Q. Okay.
 12 **A. -- whistles and everything.**
 13 Q. All right. And I think you said you moved here
 14 in 1948?
 15 **A. Six.**
 16 Q. Six. Okay.
 17 **A. As soon as I got out of high school, I left**
 18 **Pine Bluff to...**
 19 Q. Okay. And where did you move to here in Ozark
 20 when you moved here?
 21 **A. Right over where I'm living now.**
 22 Q. Okay.
 23 **A. Because the family has had that house I know**
 24 **since 1927.**
 25 Q. Oh, okay.

4 (Pages 13 to 16)

Page 17 1 A. So I have lived there lots of times. 2 Q. Okay. I understand. Okay. What did you do 3 with your trash in 1946? 4 A. What did I do -- do what? 5 Q. What did you do with your trash? Did you have 6 trash service, or did you have someone come pick the 7 trash up? 8 A. We burned it. 9 Q. Okay. What about your cans and your glass? 10 A. I have no idea. 11 Q. Okay. You don't remember that? 12 A. I wasn't interested in housekeeping at the 13 time. 14 Q. Okay. Fair enough. 15 MS. JONES: Ma'am, I'm still not. 16 Q. Okay. 17 A. I do recycle now. 18 Q. I try to as well. Okay. 19 A. Well, I do when I don't forget to put it out. 20 Q. Yeah. 21 A. But it keeps for another week. 22 Q. Okay. This walk that you took, do you remember 23 approximately what year it would have been that 24 you -- with the Main Street Arkansas? Do you 25 remember that time period when that walk would have	Page 19 1 A. I believe so. 2 Q. Okay. So it would have been before 1997. Let's 3 say? 4 A. Well, it couldn't -- if he was manager it 5 couldn't have been after '97. 6 Q. Okay. 7 A. Because that's when he died. 8 Q. Okay. So -- okay. But the walk would have 9 happened prior to his death then? 10 A. Oh yeah. 11 Q. Okay. All right. I just want to make sure we 12 got that clear. And during that walk, was that on 13 the north side of the tracks, or did you cross over 14 to the south side of the tracks? 15 A. I think we crossed over and walked along the 16 river bank, if I'm not mistaken. 17 Q. Okay. So you -- 18 A. It's been a while and I -- my mind kind of 19 wanders sometimes. 20 Q. I understand. Yes, ma'am. But you do think -- 21 was -- do you think you crossed over somewhere around 22 the depot? 23 A. I don't remember where we crossed. 24 Q. Okay. 25 A. I just know we got over close to the river.
Page 18 1 happened? 2 A. Well, like I am about my retirement, I can't 3 remember what year James retired because he went to 4 work for Main Street when he retired from Arkansas 5 Valley. 6 Q. Yes. Yeah, I believe he served until '96, if I 7 remember correctly. And I know -- 8 A. Probably so. 9 Q. And I know Main Street Ozark started about 10 1988, I believe? 11 A. Okay. He was the second manager. 12 Q. Okay. 13 A. Tommy Dangers (phonetic) was the first 14 manager, I believe. 15 Q. Uh-huh. 16 A. And then James took it. Tommy's health was so 17 bad he couldn't, and James had it for several years, 18 but I don't remember how much. 19 Q. So the walk that you took was with Sandra 20 Hanson. Would that have been when James was still 21 serving as the director? 22 A. I believe that Sandra retired while -- or she 23 moved to another department. 24 Q. Okay. So that would have been, I guess, before 25 James finished his --	Page 20 1 Q. Okay. 2 A. Because whoever was along with -- and I think 3 it was Sandra. It may not have even been her. 4 Q. Okay. 5 A. There has been so many down there that... 6 Q. Do you think it might have been Sandy Key? 7 A. No, it wasn't Sandy. I know her. 8 Q. Okay. All right. So it wasn't from the local 9 Ozark Main Street? 10 A. No, it was -- 11 Q. Okay. 12 A. They were from Little Rock. 13 Q. Okay. Okay. Do you remember -- the crossing 14 that you took, do you remember what it was made of or 15 anything about it? 16 A. I sure don't. 17 Q. Okay. 18 MR. BROCKETT: Okay. I believe that's 19 all I have got. 20 EXAMINATION 21 BY MS. JONES: 22 Q. Ms. Gilmer, just one more question. Do you 23 have -- is your daughter still married to Scott? 24 A. Yeah. 25 Q. Do you have Scott's phone number?

5 (Pages 17 to 20)

Mary Gilmer 3/10/2015

City of Ozark v. Union Pacific Railroad Company

Page 21

1 A. No, I don't.

2 Q. Okay. Do you have -- do you know a number that
3 would reach him, your daughter or anything?

4 A. Well, Betty has a cell phone. They don't have
5 a home phone anymore.

6 Q. Okay.

7 A. And I'm sure Scott has a cell phone also, but
8 I, I don't have his number.

9 Q. Okay. What about your daughter's, do you have
10 her number?

11 A. Oh, yeah.

12 Q. Could you give that to me?

13 A. 209-0659.

14 Q. And is it 479?

15 A. Uh-huh.

16 Q. Okay. And what is her name?

17 A. Betty Jo.

18 Q. Betty Jo. Okay.

19 A. Gilmer-James, hyphenated.

20 MS. JONES: Thank you so much, ma'am.

21 I appreciate you.

22 (The deposition was concluded at 12:48 p.m.)

23

24

25

Page 22

1 COURT REPORTER'S CERTIFICATE

2 STATE OF ARKANSAS)

)ss.

3 COUNTY OF SALINE)

4 I, JANESE FERGUSON SMITH, CCR, RPR, a
5 Notary Public in and for Saline County, Arkansas do
6 hereby certify that the facts stated by me in the
7 caption of the foregoing matter are true; and that
8 the foregoing matter was transcribed by me, to the
9 best of my ability and understanding, from my machine
10 shorthand notes taken at the time and place set out
11 in the caption hereto.

12 In accordance with Rule 30(e) of the
13 Rules of Civil Procedure, review of the transcript
14 was waived by the deponent or a party thereto.

15 I FURTHER CERTIFY that I am neither
16 counsel for, related to, nor employed by any of the
17 parties to the action in which this proceeding was
18 taken; and, further that I am not a relative or
19 employee of any attorney or counsel employed by the
20 parties hereto, not financially interested or
21 otherwise, in the outcome of this action.

22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
23 this, the 10th day of March, 2015.

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

6 (Pages 21 to 22)

DEPONENT	DATE OF THE LAST USE OF CROSSING	USE
Jessie Edgin¹	Sometime after 1970.	Edgin walked across to look around once but admitted that there was no public use for the crossing.
Byron Anderson²	Before 1970. Afterwards "[he] did not have a need to go down there and go across the tracks at that point in time." (23:7--16).	Anderson would have gone to the dump and rode horses.
Ralph Johnson³	The late 1970s.	Johnson may have shot a turtle.
Jesse Mason⁴	Never used the crossing.	
Michael Helmert⁵	1967	Helmert would have used the crossing to go to the dump, rabbit hunt, and mess around. He admitted that there was no public use for the crossing after the flooding.
Kenneth Smith⁶	Mid-1960s.	Smith used the crossing to get to his business, F&S Lumber.
Wallace Alston⁷	2000s.	Alston used the crossing for sightseeing until the crossing closed and bank fishing until the navigationway changed.
Monty Canady⁸	1972	Fishing and the dump.

¹ Full deposition attached to Motion as Exhibit 19.

² Full deposition attached to Motion as Exhibit 32.

³ Full deposition attached to Motion as Exhibit 33.

⁴ Full deposition attached to Motion as Exhibit 34.

⁵ Full deposition attached to Motion as Exhibit 35.

⁶ Full deposition attached to Motion as Exhibit 9.

⁷ Full deposition attached to Motion as Exhibit 36.

⁸ Full deposition attached to Motion as Exhibit 6.

DEPONENT	DATE OF THE LAST USE OF CROSSING	USE
Paul Stacy ⁹	Not since the 1950s or 1960s.	Fishing.
Truman Johnson ¹⁰	Before 1960	Mr. Johnson helped his father load cut trees into a train across the crossing.
Dorothy Johnson ¹¹	Before 1944.	Mrs. Johnson's father owned a sawmill in the approximate location of where F&S Lumber was located in the 1950s.
Robert Trotter ¹²	Before 1970 (unless there had been a fire he had to respond to, but he does not have a specific memory).	He used it for the dump.
Mary Francis Gilmer ¹³	Gilmer has never used the crossing to her knowledge. She did take a walk with Main Street Arkansas officials one day in the 1990s but does not know if they crossed at the crossing.	
Paul Reeves ¹⁴	Never used the crossing.	
Barbara Bearden ¹⁵	Late 1970s or 1980s.	Dump and fishing.
Harold Pickartz ¹⁶	Right after the dam was built but before it finished flooding (probably early 1970s).	Dump, shoot rats.
Jimmy Bearden ¹⁷	Early 1980s.	Dump, shoot rats, lumber company.

⁹ Full deposition attached to Motion as Exhibit 37.

¹⁰ Full deposition attached to Motion as Exhibit 38.

¹¹ Full deposition attached to Motion as Exhibit 39.

¹² Full deposition attached to Motion as Exhibit 7.

¹³ Full deposition attached to Motion as Exhibit 18.

¹⁴ Full deposition attached to Motion as Exhibit 40.

¹⁵ Full deposition attached to Motion as Exhibit 41.

¹⁶ Full deposition attached to Motion as Exhibit 42.

¹⁷ Full deposition attached to Motion as Exhibit 43.

DEPONENT	DATE OF THE LAST USE OF CROSSING	USE
Sonny Hill¹⁸	Not after the Corps flooded the land.	Dump, shoot gar.
Maxey Helmert¹⁹	Early 1980s.	Dump, shoot rats.
Harrison Allred²⁰	1991	Allred used the crossing for his job at the gas company that leased the land for the propane tanks.
Loye Randolph²¹	Late 1970s.	Fishing.
Bill Bearden²²	1952	Used it twice, once to dump trash and once to visit a friend's dad at the pallet plant.
Marshall Chrisman²³	1970s.	Chrisman had a tugboat parked on the Corps land until it was destroyed in the 1970s.
Don Whitson²⁴	1960s.	Whitson used it to go to the dump, shoot rats, and visit his friend at F&S Lumber.
Virginia Brown²⁵	late 1940s or early 1950s.	Her dad to her to the dump.
Shirley Wilson²⁶	1980s.	Dump and fishing.
Evelyn Whitson²⁷	Never used it.	
Lonnie Turner²⁸	1980s.	Shoot rats, dump.

¹⁸ Full deposition attached to Motion as Exhibit 44.

¹⁹ Full deposition attached to Motion as Exhibit 45.

²⁰ Full deposition attached to Motion as Exhibit 46.

²¹ Full deposition attached to Motion as Exhibit 47.

²² Full deposition attached to Motion as Exhibit 48.

²³ Full deposition attached to Motion as Exhibit 49.

²⁴ Full deposition attached to Motion as Exhibit 50.

²⁵ Full deposition attached to Motion as Exhibit 51.

²⁶ Full deposition attached to Motion as Exhibit 52.

²⁷ Full deposition attached to Motion as Exhibit 53.

²⁸ Full deposition attached to Motion as Exhibit 54.

DEPONENT	DATE OF THE LAST USE OF CROSSING	USE
Robert Chrisman²⁹	Probably not after 1980s.	Chrisman had a tugboat parked on the Corps land. He was not quite sure the last time he was there, but it was for his tugboat. His brother testified that the boat was destroyed in the 1970s.
Joe Powell³⁰	1970s.	Powell had a part time job loading coal on the railroad cars.
Phillip Smith³¹	1970s.	Smith would have used the dump and general exploring.
Janet Powell³²	Late 1960s.	Powell's father was Kenneth Smith and she would visit F&S Lumber, which closed in the late 1960s.
Brenda Mann³³	1950s.	Dump.
Thomas Watson³⁴		
Geneva McClellan³⁵	1963	Dump.
Craig Birchler³⁶	1995	A friend of his took him down on a jeep tour of the area.
Steve Outlaw³⁷	1966	The dump.
Richard McClellan³⁸	1963	The dump.

²⁹ Full deposition attached to Motion as Exhibit 55.

³⁰ Full deposition attached to Motion as Exhibit 56.

³¹ Full deposition attached to Motion as Exhibit 57.

³² Full deposition attached to Motion as Exhibit 58.

³³ Full deposition attached to Motion as Exhibit 59.

³⁴ Full deposition attached to Motion as Exhibit 60.

³⁵ Full deposition attached to Motion as Exhibit 61.

³⁶ Full deposition attached to Motion as Exhibit 62.

³⁷ Full deposition attached to Motion as Exhibit 63.

³⁸ Full deposition attached to Motion as Exhibit 64.

DEPONENT	DATE OF THE LAST USE OF CROSSING	USE
Bill Brockett ³⁹	1980s.	To pick up trucks from the propane company to do repairs at his repair shop.
Bob Bond ⁴⁰	1970s.	The dump.
Alice Brooks ⁴¹	1950s.	Church volunteer work at one of the houses south of the tracks.
Matthew Post ⁴²	1940s.	Hunting rabbits, the dump.
Andrew Post ⁴³	1981	Offloaded tanks from a railcar for his business in 1981; harvest cane and fishing as a child and teenager.

³⁹ Full deposition attached to Motion as Exhibit 65.

⁴⁰ Full deposition attached to Motion as Exhibit 66.

⁴¹ Full deposition attached to Motion as Exhibit 67.

⁴² Full deposition attached to Motion as Exhibit 68.

⁴³ Full deposition attached to Motion as Exhibit 69.

Transcript of the Testimony of

Jesse Thomas Edgin

Date: February 13, 2015

Case: City of Ozark v. Union Pacific Railroad Company

Bushman Court Reporting

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Jesse Thomas Edgin 2/13/2015

City of Ozark v. Union Pacific Railroad Company

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION 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 JESSE THOMAS EDGIN February 13, 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. McKay 5 5 EXAMINATION 6 By Mr. Brockett 26 7 EXAMINATION 8 By Mr. McKay 35 9 EXAMINATION 10 By Mr. Brockett 38 11 EXAMINATION 12 By Mr. McKay 39 13 14 E X H I B I T S 15 16 Exhibit No. 90 (Edgin Notice) 9 17 18 19 20 21 22 23 24 25
Page 2	Page 4
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 JOSEPH P. MCKAY, 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	1 ANSWERS AND DEPOSITION OF JESSE THOMAS 2 EDGIN, a witness produced at the request of the 3 Defendants, was taken in the above-styled and 4 numbered cause on the 13th day of February, 2015, 5 before Janess Ferguson Smith, Certified Court 6 Reporter and Notary Public in and for Saline County, 7 Arkansas, at the Offices of Sayre & Brockett, 401 8 West Commercial Street, Ozark, Arkansas, at 10:56 9 a.m. 10 11 * * * * * 12 13 S T I P U L A T I O N S 14 It is stipulated and agreed by and between 15 the parties through their respective counsel that the 16 deposition of JESSE THOMAS EDGIN may be taken for any 17 and all purposes according to the Federal Rules of 18 Civil Procedure. 19 * * * * * 20 21 22 23 24 25

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1 JESSE THOMAS EDGIN,
 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 MR. BROCKETT: I just want to the same
 7 stipulation as to deposition by agreement
 8 of the parties. All objections are
 9 reserved except as to the form of the
 10 question and responsiveness of the answer.
 11 MR. MCKAY: That's correct.
 12 EXAMINATION
 13 BY MR. MCKAY:
 14 Q. Will you please state your full name for the
 15 record?
 16 A. **Jesse Thomas Edgin.**
 17 Q. Okay. Mr. Edgin, my name is Joe McKay. I
 18 represent Union Pacific Railroad in a lawsuit where
 19 the city has sued Union Pacific concerning a crossing
 20 referred to as the Oliver Street crossing, and you
 21 have been identified by the city as a witness in the
 22 case. Are you aware of that?
 23 A. **No.**
 24 Q. Okay. Well, the reason we asked to take your
 25 deposition is because you have been listed by the

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1 city as a possible witness, so we are here today just
 2 to find out what you know, if anything. Have you
 3 ever given a deposition before?
 4 A. **Yes.**
 5 Q. Okay. In what type of case was it?
 6 A. **In the City of Ozark versus Thomas Owens.**
 7 Q. Okay. You'll -- you understand, then, I'm here
 8 to ask questions. A couple of ground rules, you are
 9 doing great so far. If you will allow each of us to
 10 finish asking our question before you start an
 11 answer, that way we are not talking over each other,
 12 because the court reporter can't take down if we are
 13 speaking at the same time.
 14 And, also, if you'll do your best to avoid
 15 nodding your head, if you'll answer out loud, because
 16 she can't take down a head nod as a response. Is
 17 that fair enough?
 18 A. **Yes.**
 19 Q. And if I ask a question that you do not
 20 understand, will you ask me to rephrase it?
 21 A. **Right.**
 22 Q. Okay. I don't think we are going to be here
 23 very long, but if we need to take a break for any
 24 reason, you just let us know, and we will accommodate
 25 you. What year were you born in?

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1 A. **1938.**
 2 Q. Okay. And that makes you how old?
 3 A. **Seventy-six.**
 4 Q. Okay. Have you lived in Ozark your whole life?
 5 A. **Most of it, yes.**
 6 Q. Okay. Were you born in this area?
 7 A. **No, I was born in Washington D.C.**
 8 Q. Okay. And how old were you when you moved to
 9 Ozark?
 10 A. **My father and mother were from this area, and**
 11 **they moved back to Arkansas.**
 12 Q. Okay. Do you remember what year that was?
 13 A. **1940.**
 14 Q. Okay. So from '40 until present you have been
 15 in Ozark?
 16 A. **Right.**
 17 Q. Okay. Did you graduate from high school?
 18 A. **Yes.**
 19 Q. In Ozark?
 20 A. **Ozark 1956.**
 21 Q. Okay. And then did you have any formal
 22 education after high school?
 23 A. **No.**
 24 Q. All right. What did you do for work after high
 25 school?

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1 A. **Retail grocery store --**
 2 Q. Okay.
 3 A. **-- manager.**
 4 Q. Okay. Was that a grocery store here in Ozark?
 5 A. **Ozark. I managed an IGA store, a Dillon's**
 6 **store.**
 7 Q. Okay. And where was that store located?
 8 A. **Where CV's is now.**
 9 Q. Here in Ozark?
 10 A. **In the prior IGA store located across the**
 11 **street where the Priority Bank is, the back part of**
 12 **Priority Bank.**
 13 Q. Here in Ozark?
 14 A. **Right.**
 15 Q. Okay. And were you in that line of work
 16 managing grocery stores your entire career?
 17 A. **Right.**
 18 Q. Okay. Did you retire?
 19 A. **Right.**
 20 Q. What year did you retired?
 21 A. **1962 from the Ozark schools as a bus driver and**
 22 **maintenance man.**
 23 Q. Okay. How long did you work for the Ozark
 24 schools?
 25 A. **Twenty-two years.**

2 (Pages 5 to 8)

Page 9	Page 11
1 Q. Okay. And you retired in 1966? 2 A. Two. 3 Q. 1962? 4 A. Let's see, when I was 62 -- 76 would be 5 seven -- 65. 6 Q. You retired when you were 65? 7 A. Right. 8 Q. Okay. 9 A. When I was 62. 10 Q. When you were 62? 11 A. Right. 12 Q. Okay. Do you know what year that was? 13 A. No, I don't. 14 Q. Okay. I had written down you retired in 1962, 15 but that's not right; is it? 16 A. No, huh-uh. 17 Q. You retired when you were 62? 18 A. Right. 19 Q. Okay. I want to label a document as an exhibit 20 to your deposition. This will be Exhibit Number 90. 21 (Exhibit No. 90 was marked.) 22 BY MR. MCKAY: 23 Q. Let me explain to you what I am going to label 24 as Exhibit Number 90. This is the Notice of 25 Deposition and the Subpoena that it looks like you	1 documents outlined in paragraphs one through six. 2 Q. Okay. Thank you very much. And did you serve 3 on the city council at any time? 4 A. Yes. 5 Q. Okay. What years did you serve on the city 6 council? 7 A. The years were prior to 12 years ago. Now, 8 what years that was, I'm not sure. 9 Q. Okay. Well, if this is 2015, that would take 10 us back to 2002, 2003? 11 A. Right. 12 Q. Do you know if you were serving in office in 13 2002? 14 A. 2002, I'm not sure. 15 Q. Okay. 16 A. My memory is not -- 17 Q. I understand. 18 A. -- as good it used to be. 19 Q. I understand. So you would have finished your 20 last term sometime in the early 2000s, you think? 21 A. Right. 22 Q. And then when did you think you went on the 23 city council, approximately? 24 A. I served three terms. 25 Q. Okay.
Page 10	Page 12
1 received, because you brought that with you today; 2 correct? 3 A. (Witness nods head.) 4 Q. You have to answer out loud. 5 A. Correct. 6 Q. Okay. And did you notice in the subpoena at 7 the back we asked that if you had any documents 8 responsive to these requests that you bring those 9 with you? Did you -- 10 A. I have no documents. 11 Q. Okay. I just want to read through that list 12 and just get you to confirm you don't have any 13 documents. 14 A. I don't have any documents, notes or otherwise. 15 Q. Okay. If you'll just take a second and just 16 look at Exhibit 90, and we will go to the page that 17 says Exhibit A, and instead of me reading through 18 these, it will probably be faster for you to read 19 them. 20 Just start at number one and read through 21 number six, and after you do that I am just going to 22 get you to confirm on the record you don't have any 23 documents that are responsive to the things requested 24 in Exhibit A. 25 A. (Witness reviews document.) I don't have any	1 A. Which is six years. 2 Q. Okay. Three-terms, six years, do you know were 3 those consecutive terms, or were there any breaks in 4 between them? 5 A. There was one term, a two-year break in 6 between -- 7 Q. Okay. 8 A. -- four and six. 9 Q. Were you elected for each of those three terms? 10 A. Yes. 11 Q. Okay. I want to go back to the period of time 12 before the lock and the dam was built. Okay? 13 A. Yes. 14 Q. And the lawsuit, as you're probably aware, is 15 concerning a street that the city calls Oliver 16 Street, and there was a crossing at one time just a 17 couple of hundred yards east of the railroad depot in 18 downtown Ozark? 19 A. Right. 20 Q. Are you familiar with that area? 21 A. Right. 22 Q. Okay. Before the lock and the dam were built 23 did you ever use that crossing for any reason? 24 A. Yes. I walked, I walked across the crossing 25 where the crossing was. I never did drive across it.

3 (Pages 9 to 12)

Page 13	Page 15
1 Q. Okay. Was it a road or more of a trail -- 2 A. It was a road. 3 Q. -- or how would you describe it? 4 A. It was a road, just access -- 5 Q. Okay. 6 A. -- to a, to a, what they call a dump. 7 Q. Okay. And do you remember any other structures 8 on the other side of the railroad tracks? 9 A. There was a propane tank down there -- 10 Q. Okay. 11 A. -- and a lumber company. The lumber company 12 burned, and I don't remember what year. 13 Q. Okay. Were there any other structures that you 14 remember besides -- 15 A. There were some old houses down in there. 16 Q. Do you know if they were occupied? 17 A. At one time they were, yes. 18 Q. Did you know anyone that lived in those houses? 19 A. Some of the Alstons, some of the Kuykendalls. 20 Q. Okay. Do you know what -- 21 A. I didn't know them personally. 22 Q. Do you know what years that was that they lived 23 in those structures? 24 A. That was in the fifties, early fifties. 25 Q. Okay.	1 Q. Okay. And then after the area was flooded 2 because of the lock and the dam there was just a 3 little bit of land there on the edge of the railroad 4 tracks? 5 A. Right. 6 Q. Okay. Was there any public reason or any 7 public use for people to go across that crossing 8 after the dam was built? 9 A. No, other than to be nosey, no. 10 Q. Okay. There was nothing over there, 11 essentially? 12 A. No. 13 Q. Okay. Did you ever go across the tracks after 14 the lock and dam was built at that location? 15 A. I think one time. 16 Q. Okay. What was the purpose of that? 17 A. Just to walk around. 18 Q. Okay. There have been some people that have 19 talked about even after the dam was constructed there 20 were some propane tanks that were sitting up on some 21 railroad property? 22 A. I don't remember what year the propane tanks 23 were moved. There was some there at one time. 24 Q. Okay. When the propane tanks were there after 25 the lock and dam was constructed did that road
Page 14	Page 16
1 A. It would probably be '52 to '50 -- probably 2 '58. 3 Q. Okay. And then there was a point in time where 4 the lock and the dam was constructed? 5 A. Right. 6 Q. Do you remember what year that was, 7 approximately? 8 A. 1967, I believe. 9 Q. Okay. Late sixties? 10 A. Right. 11 Q. And that -- when the lock and dam was 12 constructed then that formed what people have called, 13 referred to as the Ozark pool -- 14 A. Right. 15 Q. -- which is that body of water just across from 16 downtown? 17 A. Right. 18 Q. Okay. 19 A. Right. 20 Q. When that occurred, we've, we've heard 21 testimony that the dump was actually moved, and those 22 structures were taken out, and all of that area that 23 people used to access was flooded. 24 A. To my knowledge, the water consumed the dump 25 area, and people were asked to quit dumping there.	1 essentially end at the propane tanks? 2 A. I think so. 3 Q. So besides going to the propane tanks there 4 would have been no other reason to use that road? 5 A. Yeah, that was after the pallet mill burned. 6 Q. Okay. Did you ever know what the name of that 7 road and the crossing was? 8 A. No. It was just a road to the dump is the only 9 thing I knew. 10 Q. Had you ever heard it called Oliver Street? 11 A. Not until the last couple, the few years. 12 Q. Okay. Are you familiar with River Street? 13 A. Right. 14 Q. Is that the street that runs parallel to the 15 tracks? 16 A. Right. 17 Q. And are you familiar with a street called Water 18 Street? 19 A. Water Street? 20 Q. Yes, sir. 21 A. No. 22 Q. Okay. Were you ever involved in any request 23 for the railroad to reinstall the crossing referred 24 to as the Oliver Street crossing? 25 A. No.

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1 Q. Did you ever have any discussions with the 2 railroad concerning that crossing? 3 A. No, I didn't. 4 Q. Did you have ever have any discussions with the 5 Corps of Engineers concerning that crossing? 6 A. No. 7 Q. Do you remember, and I know that we're talking 8 several years ago, and there has probably been a lot 9 of issues you dealt with when you were on the city 10 council, but do you recall was there ever any time 11 when a local citizen or anyone complained about the 12 train whistles blowing in downtown Ozark? 13 A. I heard Mayor McDaniel make reference to that, 14 but there was never anybody ever come to the council 15 and, and made a comment on it, that I can remember. 16 Q. Okay, okay. And you mentioned Mayor McDaniel? 17 A. Right. 18 Q. Was he the mayor at one point in time when you 19 served on the council? 20 A. Yes. 21 Q. Do you remember what year that was or which 22 term you were in? 23 A. The first two terms, I think. 24 Q. Okay. That's the only time you recall 25 anybody --	1 meeting last year about an individual complaining 2 about whistles being blown at the crossing and the 3 railroad informing the city that they would agree to 4 take the crossing out. 5 A. No. 6 Q. Well, I am explaining that was a discussion at 7 a recent meeting. 8 A. Right. 9 Q. Okay. 10 A. I wasn't at that meeting. 11 Q. Okay. All right. What I want to do is I want 12 to read you an excerpt that Mr. McNutt stated at the 13 meeting and just see if this refreshes your 14 recollection or if you remember being a part of this 15 at all. 16 And Mr. McNutt is referring to a meeting 17 when Todd Timmerman was the mayor. He said, Todd 18 Timmerman put a letter to the council down at the 19 other place, and it's a courtesy letter from the 20 railroad to say they were closing that, talking about 21 the crossing. And about that time we requested it be 22 a quiet zone, and they took the crossing out. 23 Do you know if you were at a meeting where 24 Todd Timmerman told the council that the railroad had 25 said they were going to close the crossing?
Page 18	Page 20
1 A. Right. 2 Q. -- complaining about a whistle? 3 A. Right. He brought it up once or twice. 4 Q. Okay. The mayor brought it up? 5 A. The mayor brought it up. 6 Q. The individual didn't come to the meeting and 7 complain? 8 A. No. 9 Q. Okay. Were you on the city council when Tim 10 [sic] Timmerman was mayor? 11 A. Yes. 12 Q. Okay. Were you there his entire term? 13 A. Yes. 14 Q. Okay. Todd Timmerman, I'm sorry. 15 A. Right. 16 Q. I think I used the wrong first name. Thank 17 you. We have -- there is a transcript from a city 18 council meeting that was conducted just January of 19 last year, and I want to read -- do you know a 20 Mr. McNutt who is the mayor now? 21 A. Yes. 22 Q. Okay. Did he serve on the city council when 23 you were there? 24 A. Yes. 25 Q. Okay. There was a discussion at a city council	1 A. I was at a meeting that after the meeting Todd 2 Timmerman made the statement, not in the meeting but 3 after the meeting, that he had had a conversation 4 with someone at the railroad, and they wanted to 5 close the crossing, and they would, had agreed to, 6 excuse me, to trade the crossing for the depot. 7 Q. Okay. And -- okay. Do you remember anything 8 else about -- 9 A. No. 10 Q. -- what the mayor said at that time? 11 A. There wasn't any -- there was discussion after 12 the meeting. I don't remember who all was at the 13 discussion. 14 He asked if there was any opposition to it, 15 and nobody said nothing, so I took it by that there 16 wasn't any opposition, so I said nothing. 17 Q. Okay. 18 A. And that was the end of the conversation. 19 Q. And so did you take it from that that the city 20 council had given Mr. Timmerman permission to go 21 ahead with this deal and make the trade? 22 A. Yes. 23 Q. And the trade was to close the crossing in 24 exchange for the depot? 25 A. Right.

5 (Pages 17 to 20)

Page 21 1 Q. And so as far as you were concerned as a city 2 councilman, the city council had approved that 3 action? 4 A. Right. If there was any opposition, I never 5 heard of any. 6 Q. Okay. All right. And then do you remember 7 that the crossing was actually removed? 8 A. I remember it was, but I don't remember the 9 dates. 10 Q. Okay. Did anyone ever come to you or come to a 11 city council meeting and say, We object to that 12 crossing being removed? 13 A. No. 14 Q. Okay. Did anyone from the city council 15 approach the railroad after that and object to the 16 crossing being removed? 17 A. Not that I know of. 18 Q. Okay. And do you know the city actually got 19 the deed to the depot as a result of that 20 transaction? 21 A. No, I don't know whether they did or not. 22 Q. Okay. 23 A. In the conversation with the Mayor Timmerman I 24 was -- I learned that the city was paying so much a 25 month for the use of the depot.	Page 23 1 A. No. 2 Q. Okay. Have you ever served in any position 3 with Main Street Ozark? 4 A. No. 5 Q. Do you know what that organization is? 6 A. Yes. 7 Q. Okay. Other than what we have discussed, do 8 you have any other knowledge or recollection of the 9 issues concerning the removal of the Oliver Street 10 crossing? 11 A. The only thing I know is that the street sign 12 Oliver Street had been put up there in the past two 13 years. 14 Q. Okay. So that's something recent? 15 A. Right. 16 Q. Okay. And is the street sign you're talking 17 about, are those the street signs that's depicted in 18 Exhibit 18 and 19? 19 A. Right. 20 Q. Okay. So that's something new that has gone 21 up? 22 A. That's right. 23 Q. Okay. 24 A. That went up under Mayor Sneath's tenure. 25 Q. Tenure, okay. And it looks like and others
Page 22 1 Q. Before the trade? 2 A. Yeah, right. 3 Q. Okay. But, but then at some point there was 4 the trade that you talked about? 5 A. That ceased. 6 Q. That ceased when the city gained ownership of 7 the depot? 8 A. Right. 9 Q. Okay. But as far as you were concerned, it was 10 your understanding that the city council had given 11 Mayor Timmerman the authorization to make the trade? 12 A. As far as I know, yes. 13 Q. And the trade was to close the crossing in 14 exchange for the depot? 15 A. Right. 16 Q. Okay. Do you remember what year that was? 17 A. No, I don't. It was sometime prior to the last 18 12 years. I know that. 19 Q. Okay. 20 A. Anything that I know about the situation in the 21 past 12 years is what I read in the paper. 22 Q. Okay. You haven't been to any city council 23 meetings -- 24 A. No. 25 Q. -- in the last 12 years?	Page 24 1 have said that the road that's there, what's now 2 called Oliver Street was, it was never a paved road? 3 A. Never was. 4 Q. And one person even described it as a path at 5 one time? 6 A. Right. 7 Q. Before the lock and dam was built? 8 A. You could get down there with a vehicle, but it 9 wasn't very feasible. 10 Q. Okay. But it was not any sort of road that the 11 city ever maintained? 12 A. No, no. 13 Q. It didn't have gutters or anything like that? 14 A. No, it never did. 15 Q. Okay. 16 A. In fact, the name Oliver Street, I don't know 17 where in the hell that come from. 18 Q. Okay. Do you know -- 19 A. I think there were some people, colored people 20 that lived down in here named Oliver at one time. 21 Q. Do you know if there ever was a name for that 22 road? 23 A. No. 24 Q. Okay. 25 A. The road to the dump is the only thing I ever

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Page 25 1 knew it by. 2 Q. Okay. 3 A. I imagine after my statement that the city 4 won't want me as a witness. That's just what I 5 imagine. 6 Q. Okay. 7 A. I would like to be excluded, if I could, but if 8 you decided I can be a witness, I will be, but I 9 don't want to be because I don't have anything good 10 to say about the situation. 11 Q. What are your thoughts on the situation? 12 A. Pardon? 13 Q. What are your thoughts -- 14 A. My thoughts are we ain't got no damn business 15 even trying to sue the railroad over something that 16 they agreed to. 17 Q. Okay. 18 A. And I partially agreed to. 19 Q. As a member of the city council? 20 A. Not in a public meeting but as a member, yes. 21 Q. Okay. 22 MR. MCKAY: Okay. I don't think I 23 have any other questions. Thank you for 24 your time. 25 THE WITNESS: All right.	Page 27 1 city -- 2 A. I don't know what all authority. I know one of 3 the main authority he has is not to quit the job. 4 Q. Not to quit the job? 5 A. Right, because we asked him to quit when he got 6 in trouble, and he, he declined to do that, and in 7 checking with the municipal league he had that 8 authority. 9 Q. Correct. And did you guys pass ordinances 10 restricting his authority? 11 A. Yes, we did. 12 Q. Okay. But with regards to closing a city 13 street or a city alley, does he have that authority 14 without the approval of the city council? 15 A. Not really, I don't think. 16 Q. Okay. Did -- during the six years you were 17 city council member, did you, did you close a city 18 street during that -- 19 A. Not outside of a meeting, no. 20 Q. Okay. So during the time that you were on the 21 city council you did have the time to close a city 22 street or alley? 23 A. I can't remember whether we did, but we had the 24 authority, yes. 25 Q. Okay. And do you know what that process would
Page 26 1 EXAMINATION 2 BY MR. BROCKETT: 3 Q. Mr. Edgin, during the six years that you were 4 on the city council, did the city council normally do 5 business outside of the public realm? 6 A. Not normally, no. 7 Q. How many times can you remember doing business 8 outside the public quorum? 9 A. I don't remember any. 10 Q. Other than this one time? 11 A. That was just a conversation, yes. 12 Q. Okay. 13 A. We weren't in the, we weren't in the habit of 14 doing business outside of a meeting, no. 15 Q. Okay. 16 A. That's the only time that I remember it. 17 Q. Okay. Did you guys actually vote? 18 A. No. It wasn't no vote. No nothing. 19 Q. Okay. Then in the six years that you were on 20 the city council does the mayor have the authority to 21 make decisions without the city -- 22 A. Yes, he did. 23 Q. Let me -- okay, well, let me, let me finish the 24 sentence first, or the question. Well, let me change 25 it. First, what authority does the mayor have as the	Page 28 1 have been? 2 A. The petitioner would come before the council. 3 The petitioners on both side of the street or alley 4 would come before the council and, and ask that that 5 be done. 6 Q. Okay. 7 A. If there was no objection, normally it was 8 done. 9 Q. Okay. 10 A. If there was objection then we would look at 11 the objection and vote our will from that point on. 12 Q. Okay. So the city council would vote on that? 13 A. Right, right. 14 Q. In the public record? 15 A. Right. 16 Q. Okay. And in this case you do not remember 17 voting on it? 18 A. On what? 19 Q. On Mayor Timmerman closing -- 20 A. No, I know we didn't. 21 Q. Okay. All right. So when you said by 22 implication you felt -- 23 A. The conversation didn't, didn't impart the 24 closing of the street. It imparted only the closing 25 of the crossing.

7 (Pages 25 to 28)

Page 29 1 Q. Okay. And that's kind of why we're here. You 2 know, you stated that you don't know where the name 3 Oliver Street came from; correct? 4 A. Right. I think she came up with it, my 5 personal opinion. 6 Q. Okay. And you're talking about Sandy Key? 7 A. Right. 8 Q. Okay. Have you been -- 9 A. You mentioned Sandy Key; I didn't. 10 Q. And that's fine. You said "she." Is that the 11 person you're referring to? 12 A. Yes. 13 Q. Okay. 14 A. I was referring to her, but I would rather not 15 mention her name. 16 Q. But what you say here is not going to be able 17 to be sued on or anything like that. 18 A. Well, I can just see you or someone else coming 19 up in court and asking me my opinion of Sandy Key, 20 and I don't want to give it. 21 Q. I'm not asking your opinion of her. 22 A. Okay. 23 Q. Have you been provided a copy of the Complaint? 24 A. No. 25 Q. Okay. Have you asked for a copy of the	Page 31 1 Q. You got it from the city clerk? 2 A. And from the county courthouse. 3 Q. Okay. Do you know -- 4 A. When I was on the council I was very much 5 involved in everything going on. But since I was, 6 since I am not on there and moved out of state, I 7 have been out of state since 12 years ago. I have 8 not kept up with or give a damn what they did really. 9 Q. Sure, I understand. 10 A. You know. 11 Q. Going back to the plat, do you know what year 12 that plat would have been dated? 13 A. I was -- I seen the original plat that came 14 from W.H. Hill and W.H. Quail (names phonetic) when 15 the City of Ozark was platted in, I guess, the early, 16 late 1800s. 17 Q. You have seen that? 18 A. I have seen that, yes. 19 Q. Do you know what year you saw that? 20 A. I saw it in 1960s, the late 1960s. 21 Q. And where would you have seen it at? 22 A. I had that plat. 23 Q. Where did it go? 24 A. I gave it to Tom McNutt when I was, when I got 25 defeated.
Page 30 1 Complaint? 2 A. No. I didn't know I was even going to be a 3 litigant. 4 Q. Well, you're not a litigant. 5 A. Or a -- 6 Q. You're potentially a witness. 7 A. Or a potential witness. 8 Q. Yes. Have you seen any city maps that show 9 that street on it? 10 A. I have seen many, many city maps. I have never 11 seen Oliver Street on one of them. 12 Q. Okay. 13 A. To my knowledge, Oliver Street never existed. 14 Q. Okay. Are you aware of a Bell Street? 15 A. Yes. 16 Q. Are you aware there was a Bell Street crossing? 17 A. No. I've heard of it, but I wasn't aware of 18 it. 19 Q. Okay. Have you ever seen a city plat? 20 A. Yes. 21 Q. Okay. Approximately when did you see the City 22 of Ozark plat? 23 A. When I was on the council. 24 Q. Was it held at City Hall? 25 A. I got it from the city clerk.	Page 32 1 Q. You gave it to T.R. McNutt? 2 A. Right. 3 Q. Do you know if he still has it? 4 A. I don't know whether he does or not. I gave 5 him all of my maps, sewer maps, water maps, 6 everything that I had. 7 Q. And where did you get the original plat? 8 A. From the city clerk, or the county clerk, one 9 of the two, or the abstract office. I got some of 10 them -- hell, I got so many of them from different 11 places I can't remember where. 12 Q. Would it surprise you that at this time no one 13 has provided that city plat? 14 A. Yeah. Yeah, that would surprise me. 15 Q. Okay. Would it surprise you that Mr. McNutt 16 was deposed at nine a.m. on Wednesday, and he did not 17 provide that city plat? 18 A. I don't know what, what Mr. McNutt remembers or 19 doesn't remember. 20 Q. Well, do you think that he would remember that 21 you gave him the city plat? 22 A. I think he would remember that I gave him some 23 city plats and maps, but I don't, I don't -- I don't, 24 I wouldn't say which ones. 25 Q. Could we make an agreement here today that you

8 (Pages 29 to 32)

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1 would request Mr. McNutt to return that city plat to 2 you if he has it? 3 A. No, I don't have any reason to. 4 Q. Okay. But you do believe that you gave it to 5 him after you got defeated? 6 A. Right. Now, the map that appeared in the paper 7 that had Oliver Street drawn in, any fool could tell 8 that that was a made up deal. 9 You didn't have to be a mapster or a map 10 drawer to figure that someone had inserted the word 11 "Oliver" Street because it was plainly a different 12 type print and a different ink than what, what that 13 was. 14 I think I commented to Mr. McDaniel, former 15 Mayor McDaniel, that whoever did it did a damn poor 16 job of putting it in there. And I got my notion as 17 to who did it, you know, but I'll keep that to 18 myself. 19 Q. Okay. I won't, I won't argue about whether or 20 not it's there or not. Just to confirm, you did give 21 Mayor, Mayor McNutt the city plat after you were 22 defeated? 23 A. I think I did. I think I did give him that 24 plat. I know I gave him the maps and what you call a 25 plat was a map.	1 I gave him some maps and some plats, a plat 2 or some maps at one time or more than one time, but 3 I'm not going to say which ones it was because I -- I 4 don't know which ones it was. Now, if I had it in 5 front of me, I might know. 6 Q. Okay. 7 A. Does anybody have a copy of this plat we're 8 talking about? 9 Q. Well, technically you can't ask a question, but 10 I will indulge you and say at this point no. The 11 city plat that has Mr. Quail's name on it has not 12 been located. It would be -- 13 A. You don't know whether the railroad does or 14 not? 15 Q. Well, we've -- to this point we have requested 16 all of their information, and it had has not been 17 provided either, so no. 18 MR. BROCKETT: That's about all I've 19 got. 20 EXAMINATION 21 BY MR. MCKAY: 22 Q. Just a couple more questions based on some 23 things that were asked. When we were talking about 24 the meeting with Mayor Timmerman when he had 25 explained to the council the railroad --
Page 34	Page 36
1 Q. It should have been a plat, yes, I mean a map, 2 but it should have been an original layout of the 3 original Ozark downtown? 4 A. Well, now I may have that -- I may have that 5 confused with a, with a plat that I had of the 6 property I now reside on, and that had a plat, that 7 had a plat to it, which was from Quail and Hill to 8 the City of Ozark. I may be confused there. I'm not 9 sure. 10 Q. Well, that should be -- 11 A. That's the reason I'm not sure what I can say 12 that I gave Mr. McNutt. 13 Q. Well, that should be the original plat because 14 Mr. Quail appears to be the original purchaser of 15 most of the downtown Ozark area. 16 A. To my knowledge, yes. 17 Q. So to your knowledge, you had the original 18 plat, and you gave it to Mr. McNutt? 19 A. To my knowledge, yes. 20 Q. Okay. 21 A. Of course, my thinking ain't too damn good now. 22 I'm not going to get up and swear to that. I swore 23 to testimony, and that's fine, but I'm not going to 24 get up in court and swear that I gave Mr. McNutt a 25 certain plat or a certain map.	1 A. He just brought it up and said, Well, guys, I 2 have had a meeting with the railroad officials, and 3 they have agreed -- I'm not to say this was his exact 4 words. 5 Q. Right, but it was the gist -- 6 A. The essence of it was that they have agreed to 7 give me title to the depot if I would give up the 8 crossing. 9 Q. Okay. And was, was the public still there? I 10 mean, was it a meeting? 11 A. Yeah, they were standing around, yeah. 12 Q. Okay. All right. And I think you said that 13 when the city council would take an action if there 14 was a proposal, as long as there were no objections 15 it was deemed approved. If there was an objection 16 then they would vote on it? 17 A. Right. 18 Q. Okay. And so in this case -- 19 A. If there wasn't an objection we would've 20 brought it up at the next meeting. 21 Q. Okay. In this case there was no objection? 22 A. Right. 23 Q. So that transaction was deemed approved -- 24 A. Right. 25 Q. -- between the railroad and the city?

9 (Pages 33 to 36)

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1 **A. Right.**
 2 Q. Okay.
 3 **A. As far as I know.**
 4 Q. Okay. And just to make sure, I think you said
 5 this, but you're not aware of any formal document
 6 that dedicated what's been called Oliver Street as a
 7 street to the city --
 8 **A. No.**
 9 Q. -- right? As a matter of fact, you said you
 10 didn't think Oliver Street existed as a city street?
 11 **A. No. Still don't think it does.**
 12 Q. Okay.
 13 **A. Of course, I know I'm talking out of line, but**
 14 **just because you put up a street, you can put up a**
 15 **street in my yard and call it North First East First**
 16 **Place, and I might think it's that, but that ain't**
 17 **it, you know.**
 18 Q. Okay. But as far as you know, Oliver Street
 19 was never dedicated as a street; correct?
 20 **A. Not as long as I can remember.**
 21 Q. Okay.
 22 **A. And I remember back way back there.**
 23 Q. Okay.
 24 MR. MCKAY: That's all I have. Thank
 25 you.

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1 MR. BROCKETT: I do have a follow-up.
 2 EXAMINATION
 3 BY MR. BROCKETT:
 4 Q. Now, Mr. McNutt stated that if a city, if
 5 someone was trying to come to a city council and
 6 trying to close a city street and there was no
 7 objection that it would be deemed accepted; is that
 8 correct?
 9 **A. Right.**
 10 Q. So you wouldn't have to vote on it?
 11 **A. Yeah, you'd vote on it, yeah.**
 12 Q. You would have to still make up a yes or no
 13 vote?
 14 **A. To my knowledge, yes, we always did. Whether**
 15 **we had to or not, we always did.**
 16 Q. Okay. So, but on this case you did not take a
 17 vote? And when I say "this case," with regards to
 18 Mayor Timmerman and the crossing, there was no vote
 19 taken?
 20 **A. There wasn't any, any transfer of property from**
 21 **the city to the railroad, so I don't think we took a**
 22 **vote, no.**
 23 Q. And it was not during the normal meeting; it
 24 was after it was adjourned?
 25 **A. It was after a meeting.**

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1 Q. After it was adjourned?
 2 **A. Yeah.**
 3 Q. Okay. Are you aware of any plat or any
 4 ordinance adopting River Street as a city street?
 5 **A. I remember seeing it on a map from way back,**
 6 **but I can't remember when it was.**
 7 Q. Okay. And what about Water Street?
 8 **A. I don't know, have any knowledge of Water**
 9 **Street. Where is Water Street?**
 10 Q. Water Street, according to a 1942 ordinance,
 11 was River Street.
 12 **A. Well, I don't intend to tell you that I know**
 13 **all of the ordinances, but I, everything I looked at**
 14 **referred to River Street as River Street.**
 15 Q. Fair enough.
 16 MR. BROCKETT: Okay. No further
 17 questions.
 18 MR. MCKAY: That's all I have. Thank
 19 you so much for your time.
 20 THE WITNESS: You're welcome.
 21 MR. MCKAY: I appreciate it. Oh, I
 22 tell you what, can I just get him to state
 23 his address on the record?
 24 MR. BROCKETT: Yes.
 25 EXAMINATION

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1 BY MR. MCKAY:
 2 Q. I need to ask you your address just to confirm.
 3 **A. 101 East Main Street.**
 4 Q. Okay. Can you state your home address?
 5 **A. 101 East Main Street.**
 6 Q. And that's in Ozark?
 7 **A. Ozark, yes.**
 8 MR. MCKAY: Okay. Thank you. That's
 9 it. Thank you so much.
 10 THE WITNESS: Okay. Thank you.
 11 (The deposition was concluded at 11:32 p.m.)
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10 (Pages 37 to 40)

Jesse Thomas Edgin 2/13/2015

City of Ozark v. Union Pacific Railroad Company

Page 41 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS))ss. 3 COUNTY OF SALINE) 4 I, JANESE FERGUSON SMITH, CCR, RPR, a 5 Notary Public in and for Saline County, Arkansas do 6 hereby certify that the facts stated by me in the 7 caption of the foregoing matter are true; and that 8 the foregoing matter was transcribed by me, to the 9 best of my ability and understanding, from my machine 10 shorthand notes taken at the time and place set out 11 in the caption hereto. 12 In accordance with Rule 30(e) of the 13 Rules of Civil Procedure, review of the transcript 14 was waived by the deponent or a party thereto. 15 I FURTHER CERTIFY that I am neither 16 counsel for, related to, nor employed by any of the 17 parties to the action in which this proceeding was 18 taken; and, further that I am not a relative or 19 employee of any attorney or counsel employed by the 20 parties hereto, not financially interested or 21 otherwise, in the outcome of this action. 22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 23 this, the 13th day of February, 2015. 24 _____ JANESE FERGUSON SMITH, CCR, RPR Notary Public for Saline County and Court Reporter. 25	

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Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Transcript of the Testimony of

Tom Jones

Date: February 27, 2015

Case: City of Ozark v. Union Pacific Railroad Company

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Tom Jones 2/27/2015

City of Ozark v. Union Pacific Railroad Company

Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS FORT SMITH DIVISION CITY OF OZARK, a Municipal Corporation PLAINTIFF VS. CASE ACTION NO. 2:14-CV-02196-TLB UNION PACIFIC RAILROAD COMPANY ARKANSAS STATE HIGHWAY COMMISSION, as Governing Body of the ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT, DEFENDANTS VIDEOTAPED DEPOSITION OF TOM JONES February 27, 2015 BUSHMAN COURT REPORTING 620 West Third, Suite 302 Little Rock, Arkansas 72201 501.372.5115	Page 3 I N D E X 1 2 3 EXAMINATION 4 By Ms. Jones 5 5 6 7 E X H I B I T S 8 9 Exhibit No. 241 (Grant Application). 8 10 Exhibit No. 242 (Site Plan). 14 11 Exhibit No. 243 (ARC Locations). 19 12 Exhibit No. 244 (List of Funds). 21 13 14 15 16 17 18 19 20 21 22 23 24 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 9 ON BEHALF OF THE DEFENDANTS: 10 JAMIE JONES, ESQ. 11 Friday, Eldredge & Clark 12 400 West Capitol 13 Suite 2000 14 Little Rock, Arkansas 72201 15 16 also present: Bob Dunn 17 18 19 20 21 22 23 24 25	Page 4 1 ANSWERS AND DEPOSITION OF TOM JONES, a 2 witness produced at the request of the Defendants, 3 was taken in the above-styled and numbered cause on 4 the 27th day of February, 2015, before Janess 5 Ferguson Smith, Certified Court Reporter and Notary 6 Public in and for Saline County, Arkansas. at 2800 7 Cantrell, Suite 500, Little Rock, Arkansas, at 1:57 8 p.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 TOM JONES may be taken for any and all 16 purposes according to the Federal Rules of Civil 17 Procedure. 18 * * * * * 19 20 21 22 23 24 25

1 (Pages 1 to 4)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115

Tom Jones 2/27/2015

City of Ozark v. Union Pacific Railroad Company

Page 5 1 THE VIDEOGRAPHER: We are on the audio 2 and video record. Today's date is February 3 the 27th, 2015. The approximate time is 4 1:57 p.m. 5 This is the video recorded deposition 6 of Mr. Tom Jones. This deposition is being 7 taken at 2800 Cantrell Road, Suite 500, 8 Little Rock, Arkansas. 9 Would the attorneys please make a 10 record of their appearance? 11 MR. BROCKETT: Christopher Brockett 12 for the Plaintiff, City of Ozark. 13 MS. JONES: Jamie Jones on behalf of 14 Union Pacific Railroad Company. 15 THE VIDEOGRAPHER: Will the reporter 16 please swear the witness? 17 TOM JONES, 18 the witness hereinbefore named, having first been 19 duly cautioned and sworn or affirmed to tell the 20 truth, the whole truth and nothing but the truth, 21 testified as follows: 22 MR. BROCKETT: Same stipulations, this 23 deposition is by agreement of the parties. 24 All objections are reserved except to the 25 form of the question and responsiveness of	Page 7 1 I am going with the question and start to respond, 2 but if you will allow me to me my question I will 3 allow you to finish your answer before I speak again. 4 All right? 5 A. Yes. 6 Q. Okay. And I may ask a question that you don't 7 understand. Will you please let me know, and I will 8 rephrase it for you. 9 A. Sure will. 10 Q. Okay. And you have been -- well, I don't think 11 this will take all that long today, but if you need a 12 break at any point, you let me know, and we will take 13 one. Okay? 14 A. Yes, ma'am. 15 Q. Okay. You have been named as what we call a 16 30(b)(6) or corporate representative for the 17 designation of the transient dock. What is your role 18 with respect to the transient dock? 19 A. First off, I work for the Arkansas Department 20 of Health. 21 Q. Okay. 22 A. I lead the Marine Sanitation Inspection 23 Program, the Swim Beach Program, the Clean Vessel 24 Act, and boating infrastructure grants. 25 Q. Okay.
Page 6 1 the answer. 2 MS. JONES: Okay. 3 EXAMINATION 4 BY MS. JONES: 5 Q. Mr. Jones, my name is Jamie Jones. I represent 6 Union Pacific Railroad Company. Have you given a 7 deposition before? 8 A. I have been a witness in certain cases before, 9 but not a deposition. 10 Q. Okay. Let me go through some of the ground 11 rules for you. Ms. Janess is our court reporter. 12 She is taking down everything we say, which means a 13 couple of things for you and I. 14 First, I understand nonverbal cues, but she 15 can't get that down for the record, so if you will 16 make sure to verbalize all of your responses for me; 17 okay? 18 A. Yes. 19 Q. And you will forget that at some point in this 20 deposition because every person sitting in that chair 21 does, and I will remind you. I don't do it to be 22 rude. I just do it for a clear record; okay? 23 A. Okay. 24 Q. The next thing is that she can't get us 25 speaking at the same time. You may anticipate where	Page 8 1 A. I am a grant coordinator for the U.S. Fish and 2 Wildlife Service in the State of Arkansas. 3 Q. Okay. 4 A. I am a state employee using federal, federal 5 funds. 6 Q. Part of your job is to assist others who are 7 applying for federal grants; is that right? 8 A. I am the grant coordinator and the applicant 9 for -- toward U.S. Fish and Wildlife Service. Anyone 10 else in the grant is considered the subgrantees. 11 Q. Okay. So is there a grant that's been filed 12 for the transient dock on the north side of the 13 river? 14 A. Yes. That is a location of about 20 different 15 sites, and the first year of our application is, it's 16 named the Arkansas River Connection Project. 17 Q. Do you have a copy of that grant with you? 18 A. Yes, I do. 19 Q. Okay. Let me see that. I will mark this as 20 Exhibit 241. 21 (Exhibit No. 241 was marked.) 22 BY MS. JONES: 23 Q. Okay. Before we kind of get into this I am 24 going to back up a little bit and find out a little 25 bit more about you. Okay, Mr. Jones?

2 (Pages 5 to 8)

Tom Jones 2/27/2015

City of Ozark v. Union Pacific Railroad Company

Page 9 1 A. Yes, ma'am. 2 Q. Okay. Where are you originally from? Where 3 did you graduate high school? 4 A. Clarksville High School 1968. 5 Q. Okay. Did you have any post high school 6 education? 7 A. Yes. 8 Q. Tell us about that. 9 A. At that time it was College of the Ozarks. 10 It's now University of the Ozarks. I graduated in 11 '73 with a bachelor of science with a major in 12 biology. 13 Q. Okay. And how did you come to work for the 14 Department of Health? 15 A. I applied for the position in the Johnson 16 County Health Unit as a sanitarian, and I became a 17 registered sanitarian and worked in that unit for 25 18 years. 19 Q. Okay. How did you get involved -- well, first 20 off, what is the River Rail Connection? 21 A. The River Rail Connection, I don't know what 22 that is. 23 Q. Okay. The River Rail Committee? 24 A. No. 25 MR. BROCKETT: It's river and rail,	Page 11 1 January of '13 or '14. 2 Q. Now as I understand, and correct me if I am 3 wrong, there is a plan to put a marina on the south 4 side of the river in Ozark; is that correct? 5 A. Yes. That is a projected site for the Ozark 6 marina, which was earlier planned as the Shoal Bay 7 Marina, which I applied for and got funding. 8 And the Corps of Engineers Little Rock 9 District did not want that location to be developed 10 after we got the grant, so we are amending the grant 11 and moving the location to the proposal at Ozark. 12 Q. Okay. And you are in the application process 13 currently for the marina in Ozark; correct? 14 A. The application is with the Corps of Engineers. 15 Q. Right. 16 A. Working toward the 404 permit. I've already 17 worked on site concerning the marine sewage disposal 18 system, and we've already got a permit issued through 19 the Arkansas Department of Health for the 20 construction of the septic system. 21 Q. Okay. But the Army Corps of Engineers has not 22 granted a permit for the marina? 23 A. Right. 24 Q. Okay. 25 A. That would be the 404 permit.
Page 10 1 that program -- 2 A. The Arkansas River Connection? 3 Q. Okay. Tell me what the Arkansas River 4 Connection is. 5 A. That is a combination of different city 6 governments, county governments, marina owners from, 7 all of the way from Lake Village, which is on the 8 Mississippi River, up to Helena, which is still on 9 the Mississippi, and then into the Arkansas River, 10 which starts with Pendleton and ends with several 11 sites usually 25 to 35 miles apart, and it ends at 12 Van Buren on the Oklahoma border. 13 Q. Okay. How did you get involved with the 14 Arkansas River Connection? 15 A. I work with the marina operators in the State 16 of Arkansas, and the chairman of that Arkansas River 17 Connection committee is Steve Owen. 18 And Steve Owen is manager and part owner of 19 Little Rock Yacht Club, or Hastings Bay Marina. And 20 he asked me to get informed and support them and see 21 if I could help with a grant. 22 Q. Okay. When was this that you, that he 23 approached you about getting involved with helping 24 with the grant? 25 A. It was about a year ago, probably December,	Page 12 1 Q. Okay. So this grant application marked as 241, 2 describe what this grant is for. Is it -- well, let 3 me ask you this. Does it cover the marina? 4 A. The -- no. 5 Q. Okay. 6 A. This is for the small transient dropoff dock -- 7 Q. Okay. 8 A. -- on the north side of the river -- 9 Q. Okay. 10 A. -- and either mooring buoys or a hundred foot 11 transient dock on the south side of the river in the 12 river for boats to moor or tie up to. 13 Q. Okay. So the grant that you have in Exhibit 14 241, how much is that grant for? 15 A. 1.48 million. 16 Q. Okay. And it can only be used on the transient 17 docks; right? 18 A. Yes. 19 Q. Okay. So you can't take the 1.4 million, for 20 example, and build the marina with it? 21 A. No. 22 Q. Okay. 23 A. Only the portion of the marina that is 24 transient slips. 25 Q. Okay.

3 (Pages 9 to 12)

Page 13 1 A. Which I believe in this location it's 19. 2 Q. Okay. So there would be 19 transient slips on 3 the south side of the marina and then one transient 4 slip on the north side; is that right? 5 A. I'm not sure how many -- it would depend on the 6 length of the vessels. 7 Q. Okay. 8 A. If you had a 26-foot vessels, you could have 9 more transient slips than if you had a 120-foot 10 vessel. 11 Q. Okay. But we can agree there is only going to 12 be one on the north side? 13 A. And that is, is not a slip. That is a dropoff 14 point -- 15 Q. Okay. 16 A. -- in my determination. 17 Q. Okay. Now, have you been involved with Terry 18 Burruss or Bill Ruck on the design or engineering or 19 architecture side of that transient dock on the north 20 side? 21 A. No. 22 Q. Okay. What has been your involvement with the 23 north side transient dropoff dock? 24 A. I have been in a city council meeting several 25 months ago explaining what I do and what is in the	Page 15 1 Chicot County. You've got just different ones 2 concerning the city councils and county governments 3 and marina operators from Lake Village to Van 4 Buren -- 5 Q. Okay. 6 A. -- and Crawford County. 7 Q. Now as I understand, is -- okay. Is the 8 transient dropoff dock on the north side dependent 9 upon the Corps of Engineers approving the 404 permit? 10 A. No. 11 Q. Okay. Tell me why not. 12 A. Because the 404 permit -- are we talking -- you 13 may be referring to two 404 permits. I'm not sure 14 about that. 15 Q. Well, let me rephrase. I have asked a really 16 bad question. so let me rephrase it. If the Corps 17 denies your request to build the marina on the south 18 side -- 19 A. Okay. 20 Q. -- is the north shore dropoff point going to 21 get built? 22 A. It would be independent process. 23 Q. Okay. And that's what I was -- that's what I 24 was trying to figure out, if they were connected to 25 each other or dependent, independent?
Page 14 1 application process. 2 Q. Okay. What is -- as I understand from the 3 architect and engineer, there's a conceptual design 4 for the dropoff dock, but that's it. Is that your 5 understanding as well? 6 A. Well, I have a drawing that was furnished to 7 me. It's very correct looking. It's more than 8 conceptual. 9 MS. JONES: I'll mark this as 242. 10 (Exhibit No. 242 was marked.) 11 BY MS. JONES: 12 Q. Okay. So what is your understanding of what 13 the dock will look like? 14 A. Sixty feet long, just a, somewhat of a pier 15 coming out from the bank with a walkway to the bank 16 on steel pilings driven to solid rock. 17 Q. Okay. Do you have any -- what, what is your 18 understanding of that based on? Where are you 19 getting what you just told me from? 20 A. Information that has been provided to me from 21 the committee on the Arkansas River Connection 22 through Steve Owen. 23 Q. Okay. Tell me about this committee. What is 24 it? Who is on it? 25 A. You've got the city of -- the county judge in	Page 16 1 A. They are independent. 2 Q. Okay. So although the grant application allows 3 for transient docks on both sides, one or the other 4 can be built; is that right? 5 A. Exactly. 6 Q. Okay. All right. So as I understand, and 7 correct me if I'm wrong, Mr. Owen is sort of the 8 private investor for the south side marina and would 9 receive some sort of lease from the city? 10 A. No. 11 Q. Okay. Describe, tell me, tell me -- correct my 12 understanding. 13 A. Not Steve Owen. 14 Q. All right. 15 A. Regina Olson and her family. 16 Q. Regina Olson, okay. So I think I saw Steve 17 Owen here. 18 A. Uh-huh. 19 Q. Okay. So, there's a private family who is 20 going to invest in the south side marina, and they 21 will receive, if everything goes through, a lease 22 from the city; is that correct? 23 A. That's what I understand. 24 Q. Okay. The -- that family on the south side 25 marina has nothing to do with the north side dropoff

4 (Pages 13 to 16)

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City of Ozark v. Union Pacific Railroad Company

Page 17 1 transient dock that we're here to talk about? 2 A. That's correct. 3 Q. Okay. Well, that's going to make things a 4 little bit easier to talk about. Okay. So, what is 5 it that you do -- what is your role with respect to 6 this north side dropoff point? 7 A. I am the applicant for the application going 8 to -- I am the grant coordinator on, for the 9 application going to U.S. Fish and Wildlife Service. 10 Q. Okay. 11 A. I help coordinate the construction. I help put 12 together the bid process on materials and work in 13 every way I can to -- once the grant is, is granted, 14 then I tend to try to make things happen. 15 Q. Okay. So, we've got that -- the grant has been 16 granted; correct? 17 A. No. 18 Q. Oh, this 241 hasn't been granted? 19 A. Not for the transient dock -- 20 Q. Okay. 21 A. -- at Ozark. 22 Q. Well, I'm completely confused then. Okay. 241 23 is a grant application? 24 A. Yes. 25 Q. Okay. But you don't have -- it hasn't been	Page 19 1 the Pendleton bridge to Lee Creek Park in Van Buren. 2 Q. I am going to mark this as 243. 3 (Exhibit No. 243 was marked.) 4 BY MS. JONES: 5 Q. Okay. So what are you basing your view of -- 6 are you basing your idea of what the construction of 7 this transient dock on the north side would look like 8 based on Exhibit 242? 9 A. Yes. 10 Q. Okay. If the engineer has told me that this is 11 not a finalized plan, would that change your mind or 12 whether or not you can base -- 13 A. No. 14 Q. -- your recommendation -- 15 A. No. 16 Q. Why? 17 A. Because each one of the sites in this 18 application for the tier two grant are -- each site 19 is totally separate in its design, exact footprint. 20 But in general we are looking at specific 21 sites, but there may be certain things to consider, 22 like piling changes, or the number of pilings, such 23 as that. 24 Q. Okay. So it doesn't matter if, if the 25 architecture and engineer say they don't know if its
Page 18 1 granted? 2 A. Right. 3 Q. Okay. 4 A. What has been granted is the funding for the 5 marina on the south side of Ozark. 6 Q. Okay. So you told me a while ago that the, the 7 grant was for I.4. I guess that's the application 8 that you obtained? 9 A. Application. 10 Q. Okay. All right. So we don't have any funds 11 for the transient dock on the north side right now? 12 A. No. We are reapplying before September. 13 Q. Okay. Is this the application 241 that you're 14 submitting? 15 A. No. 16 Q. Okay. Do you have the application that you're 17 submitting? 18 A. No. I have not compiled that, and what we're 19 going to do different to ensure that our percentage 20 of approval raises, we are going to apply by location 21 instead of one cluster. 22 Q. Okay. So was 241 denied then? 23 A. Yes. 24 Q. Okay. What else do you have in front of you? 25 A. A general description of each of the sides from	Page 20 1 a floating dock or a stationary dock, it doesn't 2 really affect what you do? 3 A. Well, it will be a floating dock one way or 4 other to go up and down as the river level is. It -- 5 I'm assuming what you're referring to, is it 6 anchored, or is it on pilings. 7 Q. Right. 8 A. We want all of the dock work on the Arkansas 9 River and the Mississippi River to be on pilings 10 because of it is a more secure device. 11 Q. Okay. So in order to put this dock in, we need 12 at least two things; right? We need, one, your grant 13 application to be accepted; correct? 14 A. Yes. 15 Q. And we need approval from the Corps of 16 Engineers; correct? 17 A. Correct. 18 Q. And we don't have either one of those right 19 now? 20 A. That's right. 21 Q. Okay. Is that anything different? 22 A. No. It's just a group of people from Desha 23 County to Van Buren who are helping toward the match 24 on the 25 percent/75 percent grant. 25 MS. JONES: Okay. I am marking this

5 (Pages 17 to 20)

Page 21	Page 23
1 as 244. 2 (Exhibit No. 244 was marked.) 3 BY MS. JONES: 4 Q. It says the City of Ozark Mayor Carol Sneath 5 and owner of Ozark Marina Regina Olson owner of Ozark 6 Marina commit to 39,000 in matching funds for the 7 project at Ozark Marina; is that right? 8 A. Correct. 9 Q. Okay. Now, do you realize that the mayor is no 10 longer Carol Sneath? 11 A. Yes. 12 Q. Okay. Has the current mayor committed to 13 matching funds? 14 A. I have had no contact with him. 15 Q. Okay. Does that change anything if the current 16 mayor is not going to commit? 17 A. No, I don't think so. 18 Q. Why? 19 A. I figure there are -- because of the popularity 20 of this project, it would -- there will definitely be 21 folks or organizations that would support the 22 25 percent match. 23 Q. Okay. You do not have any knowledge of the 24 crossing located on the north, or to be located on 25 the north shore; correct?	1 A. We have had a meeting with three or four of the 2 Little Rock District Corps of Engineers personnel in 3 their central office in Little Rock concerning the 4 review of each site. 5 Q. And who did you meet with? 6 A. The main one we met with was Kevin McDaniel. 7 Q. Okay. 8 A. He is chief of operations for the Little Rock 9 district. That's the main one I remember. 10 Q. Okay. And was there any specific discussion 11 about this particular, the north, north shore site? 12 A. Yes. It was one of the approximately ten that 13 we talked about in a pre-application committee 14 meeting. 15 Q. Okay. All right. And what was said at that 16 meeting about the north site? 17 A. That the Corps of Engineers Little Rock 18 District would definitely consider the application 19 for a 404 permit if the railroad crossing was 20 reconstructed or granted. 21 Q. Okay. What is a 404, just so we know? 22 A. It's a building permit. 23 Q. Okay. All right. Do you have any other 24 knowledge about the dock than what we've talked about 25 today?
Page 22	Page 24
1 A. I know approximately where it was or hoped to 2 be, approximately. 3 Q. Okay. But you don't have any firsthand 4 knowledge of it; right? 5 A. No. 6 Q. Okay. You don't have any firsthand knowledge 7 of any of the title work or anything to do with the 8 historical accuracy of a street or crossing ever 9 existed in Ozark; correct? 10 A. No. 11 Q. Okay. 12 MS. JONES: All right, give me one 13 moment. 14 THE VIDEOGRAPHER: We are going off 15 the record. It's 2:18 p.m. 16 (Short break.) 17 THE VIDEOGRAPHER: We are back on the 18 record. It's 2:19 p.m. 19 BY MS. JONES: 20 Q. Mr. Jones, do you have any knowledge of a 21 hiking or biking trail in Ozark? 22 A. No. 23 Q. Okay. Has there been an application made to 24 the Corps of Engineers for this transient dock, to 25 your knowledge?	1 A. I don't think so. 2 Q. All right. 3 MS. JONES: Thank you so much for you 4 time. 5 MR. BROCKETT: No questions. 6 THE VIDEOGRAPHER: This concludes the 7 deposition. We are off the record at 8 2:21 p.m. 9 (The deposition was concluded at 2:21 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

6 (Pages 21 to 24)

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1 COURT REPORTER'S CERTIFICATE

2 STATE OF ARKANSAS)

3 ss.

4 COUNTY OF SALINE)

5 I, JANESS 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 27th day of February, 2015.

25 JANESS FERGUSON SMITH, CCR, RPR

Notary Public for Saline County

and Court Reporter.

7 (Page 25)

Janess Ferguson Smith
Bushman Court Reporting

501-372-5115