

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION**

CITY OF OZARK, ARKANSAS, a municipal corporation	)	
	)	
Plaintiff,	)	
	)	
	)	
vs.	)	
	)	
	)	
UNION PACIFIC RAILROAD COMPANY, the ARKANSAS STATE HIGHWAY & TRANSPORTATION DEPARTMENT (an Agency of) The State of Arkansas, AND THE ARKANSAS STATE HIGHWAY COMMISSION	)	
	)	
	)	
Defendants,	)	

CIVIL ACTION NO:2:14-CV-02196-TLB

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes now the Plaintiff, the City of Ozark, Arkansas, a municipal corporation by and through its undersigned counsel, Christopher D. Brockett of Sayre & Brockett, and for its Motion for Partial Summary Judgment as to Count I of the Plaintiff's Amended and Restated Complaint, Request for Permanent Injunction and Writ of Mandamus (the "Complaint") filed against the Defendant, Union Pacific Railroad Company, an Omaha, Nebraska, for-profit corporation authorized to conduct business in the State of Arkansas.

The Plaintiff seeks in Count I of the Complaint a Declaration that an at-grade railroad crossing that was located in the downtown area of the Plaintiff was a public at-grade crossing that was known as the Oliver St. Crossing, as the at-grade crossing was part of a dedicated and platted city street known as Oliver St. (herein after "Oliver St. Crossing" and "Oliver St.").

Plaintiff further seeks a restoration of the public Oliver St. Crossing, as the Defendant unilaterally removed the public Oliver St. Crossing in February 2001 without, an affirmative vote authorizing the removal of the Oliver St. Crossing by the Plaintiff's city council, as required by Arkansas law.

As grounds for Plaintiff's Motion for Partial Summary Judgment the Plaintiff would show this Honorable Court that there are no material facts in dispute relating to Count I and pursuant to Arkansas law and Rule 56 of the Federal Rules of Civil Procedure, it is entitled to Summary Judgment on Count I of the Complaint.

UNDISPUTED FACTS

1. The Plaintiff was originally established in approximately 1835 as an unincorporated community located on the North shore of the Arkansas River.

2. In 1836, the Plaintiff was an unincorporated town, but the town of Ozark had been designated, embraced and laid off to create a downtown area.

3. Pursuant to a deed dated March 17, 1838 and recorded on August 24, 1838, W.M. Hail sold "all that fraction of the SW FRL $\frac{1}{4}$ of Section 36 in Township 10, Range 27 W., which is not embraced, laid off and designated as the tract on which Ozark is situated" to William Cureton. The previous location of the Oliver St. Crossing is located in the SW FRL $\frac{1}{4}$ Sec. 36 T 10 R 27 W. A copy of deed from WM Hail to William Cureton which is attached hereto as **Exhibit A-1** and a copy of deed transferring land from James F. Quaile and Frauk A. Quaile to Little rock and Fort Smith Railway on March 14, 1876 which is attached hereto as **Exhibit A-2** and both, along with all other exhibits, are incorporated herein as if set forth word for word.

4. Pursuant to a deed dated August 13, 1839 and recorded on August 17, 1839, John Hail & Sarah sold approximately 50 acres along the North shore of the Arkansas River in the area of the Oliver St. Crossing to a William Hail. A copy of the deed from John Hail & Sarah to William Hail is attached hereto as **Exhibit B** and incorporated herein.

5. In 1850, Plaintiff was incorporated and soon thereafter in 1852 Arkansas business representatives and politicians in Little Rock began discussing the Federal movement towards the construction of a railroad track through Arkansas that would eventually lead all the way to the West Coast.

6. Pursuant to a deed dated November 6, 1855, William Cureton transferred all of his land in the SW FRL $\frac{1}{4}$ in Section 36 in Township 10, Range 27 W to James F. Quaile, which was all land to the waters edge. A copy of the deed from William Cureton to James F. Quaile is attached hereto as **Exhibit C** and incorporated herein.

7. The Little Rock and Fort Smith Railway ("LR&FSR") (original predecessor to the Defendant) was the railroad company that was primarily responsible for construction of railroad tracks from Little Rock, Arkansas to Fort Smith, Arkansas, which would eventually pass directly through Plaintiff's downtown area.

8. Pursuant to a deed dated March 14, 1876 James F. Quaile and Frauk A. Quaile, his wife transferred 5.5 acres of land in the SW FRL $\frac{1}{4}$ in Section 36 in Township 10, Range 27 W on the condition that the LR&FSR built and depot for the Plaintiff and 60 feet on the west and north of said 5.50 acres remained unobstructed for a street or public highway, etc. See attached **Exhibit A-2**.

9. In approximately 1876 the LR&FSR railroad tracks were constructed over and across the existing, dedicated and platted dirt and gravel city street known as Oliver St., which created an at-grade public crossing that allowed Plaintiff's residents who resided on the existing area south of the Defendant's newly laid railroad tracks, North of the Arkansas River near the mouth of Gar Creek. See **Exhibits D, E, F and G** attached hereto and incorporated herein below.

10. LR&FSR built a depot in the Plaintiff's downtown area (as required by the restrictions placed in **Exhibit A-2**) and laid tracks throughout Franklin County, Arkansas.

11. On September 21, 1882, New York millionaire, Jay Gould, purchased the LR&FSR, and added it to his 1881 purchase of the St. Louis, Iron Mountain and Southern Railway ("Iron Mountain"), forming the largest railroad company in Arkansas

12. Pursuant to a deed dated November 2, 1893, J.V. Bourland and Bonnie J. transferred approximately one-third ($\frac{1}{3}$) of an acre of land to Samuel Church that was South of the LR&FSR tracks and "near and north of the mouth of the gar creek pond." A copy of the deed from J.V. Bourland & Bonnie J. to Samuel Church is attached hereto as **Exhibit D** and incorporated herein.

13. Pursuant to a deed dated September 20, 1894, Samuel Church & Jinnie transferred approximately 3.5 acres that they owned and **lived on South** of the LR&FSR tracks at the mouth of Gar Creek and the Arkansas River to J.V. Bourland. A copy of the deed from Samuel Church and Jinnie to J.V. Bourland is attached hereto as **Exhibit E** and incorporated herein.

14. Pursuant to a deed dated February 28, 1896, J.V. Bourland and Bonnie J. transferred the 3.5 acres that they **resided on** South of the LR&FSR tracks at the mouth of gar creek between the railroad tracks and the Arkansas River “being land purchased by me from Samuel Church” to Redmond R. Walting. A copy of the deed from J.V. Bourland and Bonnie J. to Redmond R. Walting is attached hereto as **Exhibit F** and incorporated herein.

15. Redmond R. Walting died during the period of February 28, 1896 and June 29, 1900 and deeded by Will his 3.5 acres of land to Julia Walting and Janice Cunningham. Julia Walting transferred her one-half $\frac{1}{2}$ undivided interest to Martin Oliver by a deed dated June 29, 1900. A copy of the deed from Julia Walting to Martin Oliver is attached hereto as **Exhibit G** and incorporated herein.

16. Jay Gould also owned the Missouri Pacific (“MPac”), which would become his parent railroad and after his death in 1892, his son, George Gould, sold the LR&FSR to Iron Mountain, which effectively ended the existence of the LR&FSR.

17. In 1910, Iron Mountain (also a predecessor to the Defendant) built a new larger railroad depot (the “Depot), which still exists in Plaintiff’s downtown area. Attached hereto is as **Exhibit H** is a copy of a picture of the downtown area showing residences on the South side of the Defendant’s tracks prior to the construction of the new Depot, which is incorporated herein.

18. In 1915, George Gould lost control of the MPac when it declared bankruptcy and in 1916, the line was merged with Iron Mountain. MPac was then reorganized as the Missouri Pacific Railroad (“MoPac”), the immediate predecessor to the Defendant.

19. In 1916, MoPac prepared a document entitled "Right of Way and Track Map for the Little Rock and Ft. Smith R.R. Co. Owned and Operated by Missouri Pacific Railroad Co. Station 6248+20 to Station 6495+40." ("Track Right of Way") This Track Right of Way is dated June 30, 1916 and is attached hereto as **Exhibit I** and incorporated herein.

20. The Track Right of Way shows details of MoPac's tracks, all railroad crossings, both private and public crossings, water line easements, sewer line easements, and downtown city streets and various tracts of property that is located between Stations 6248+20 and Station 6495+40. According to the Defendant's Track Right of Way (**Exhibit I**), the Oliver St. Crossing was a public crossing and was assigned a crossing number 6406+84. In 1916 when the map was created, the street that MoPac's crossing was located on was known as Water Street on the Track Right of Way. See **Exhibit I**.

21. MoPac would update the Track Right of Way when they would change the classification of a crossing (e.g. private to public or public to private), build additional tracks, release easements, sale real property, install mail cranes, install automatic lights, install crossing signs, install warning signs, or any other changes to the area near or around the Defendant's railroad tracks. See **Exhibit I**.

22. The first update to the Track Right of Way was made on February 16, 1924 when a T.O. Signal was added to the Track Right of Way at another location unrelated to the Oliver St. Crossing location and the Track Right of Way continued to be updated for approximately 57 years until the last reported update on July 6, 1973, which was "Replace 48" C.I.P. with 48" C.M. P.-2:1 beveled ends. See **Exhibit I**.

23. During the entire 57 year period that Defendant updated the Track Right of Way, the classification of the Oliver St. Crossing always remained classified as **a public at-grade crossing**.

24. Plaintiff's population continued to grow, and in the early 1930's, the Plaintiff's city council began a search for real property that Plaintiff could use for a city dump that would provide Plaintiff's residents better sanitation.

25. Nelise Oliver ("Nelsie"), the surviving widow of Martin Oliver (who had died testate on January 18, 1934) offered Plaintiff the option to lease a portion of her property that she inherited from her husband, Martin Oliver, for use as a city dump.

26. On February 12, 1934, Nelise completed a small estate administration to transfer title to the Oliver's Land into her sole name and then she subsequently leased a portion of the Oliver's Land to the Plaintiff for use as a city dump. A copy of the small estate affidavit is attached hereto as **Exhibit J** and incorporated herein.

27. **Exhibit J** specifically references real estate "Pt. SW SE of Sec. 26 Twp. 10 N. of R. 27 W, in Ozark and **South of Little Rock and Fort Smith Railway at the mouth of Gar Creek, and between the railroad and the Arkansas River**, being lands formerly owned by Samuel Church and later convey to said Martin Oliver by Julia Walting."

28. Plaintiff routinely piped raw sewage under MoPac's railroad tracks through a sewer pipe that was then discharged into open ditches constructed on Martin Oliver's Land that was ultimately discharged into the mouth of Gar Creek and the Arkansas River.

29. Plaintiff had installed a three-quarter ($\frac{3}{4}$) water line to provide Plaintiff's water services to the residences that were located on Oliver St, which is shown on the Track Right of Way along with a natural gas line that Arkansas Oklahoma Gas Company installed. See **Exhibit I**.

30. Plaintiff's city council leased the property from Nelsie Oliver and established a public dump that residents could use to dump their garbage. According to Plaintiff's minutes of Plaintiff's city council meetings that have been recovered, as of June 5, 1940, Nelsie, who was referred to as "Anut Nelsie" ("Nelcie") Oliver was paid \$25.00 per year by Plaintiff for the use of a portion of her property as a city dump for Plaintiff's residents. These payments continued in additional recovered minutes of the Plaintiff's city council dated May 8, 1951, December 11, 1956, and December 22, 1957. Copies of the various minutes are attached hereto as combined **Exhibit K-1, K-2, K-3 and K-4** that are incorporated herein.

31. Plaintiff did not offer local trash pickup, so residents of Plaintiff had to take their own trash to the dump or a gentleman named Jim Kuykendall who lived South of the railroad tracks offer trash service to the Plaintiff's residents. Mr. Kuykendall used a wagon and a pair of mules to haul the trash to the Plaintiff's dump located on Nelsie Oliver's land. Mr. Kuykendall used the Oliver St. Crossing to access his home located on land South of the Defendant's railroad tracks, but to also operate his trash hauling business. See Deposition of Monty Canady Page 19, which is attached hereto as **Exhibit L** and incorporated herein.

32. Plaintiff's residents obtained access to Plaintiff's new city dump by utilizing the existing public Oliver St. Crossing that had now been in existence for approximately

fifty-eight (58) continuous years and traveling along Plaintiff's existing, dirt and gravel city street known as Oliver St. to the Plaintiff's city dump.

33. In 1942, the United States was involved in World War II and representatives of MoPac approached Plaintiff's representatives in October 1942 to seek permission from Plaintiff to construct an industrial rail down "Water or River Street" to further the war effort. On October 13, 1942, Plaintiff's city council approved on an emergency basis, MoPac's request to construct the industrial rail spur down "Water or River Street." The October 13, 1942 Ordinance incorporated by reference a blueprint into the Ordinance that showed where the industrial rail spur would cross Plaintiff's existing streets and alleys as the industrial spur passed in front of the Depot and traveled down Plaintiff's River street (formerly known as Water street). A copy of the Ordinance is attached hereto as **Exhibit M-1** and a copy of the blue print is attached hereto as **Exhibit M-2** and incorporated herein. See also Deposition of Harold Pickartz page 25-26, which are attached here to as **Exhibit M-3**; the Deposition of Jimmy Bearden page 19, which is attached hereto as **Exhibit M-4** and is incorporated herein; A copy of a picture of Plaintiff's downtown area attached hereto as **Exhibit M-5** and incorporated herein; A magnified copy of **Exhibit M-5**, is attached hereto as **Exhibit M-6** and incorporated herein; and A additional magnified copy of **Exhibit M-5** is attached hereto as Exhibit M-7 and incorporated herein

34. The blue print (**Exhibit M-2**) does not specifically reference the existing, Oliver St., with an actual name, but does show the drawing of a "**gravel road**" that clearly crosses the Defendant's (then MoPac) railroad tracks to the South at the current location of the claimed Oliver St. Crossing (that was illegally removed) and then this

gravel road curves east and travels straight along the southern edge of the Defendant's (then MoPac) railroad easement toward Gar Creek, which is the exact location of Plaintiff's existing dirt and gravel city street known as Oliver St., the existing Oliver St. Crossing., and the areas of houses and the city dump leased in 1940.

35. In 1946, MoPac prepared a "Station Map Right of Way, Tracks and Structures Little Rock and F.T. Smith R. R. Co., Owned and Operated By Missouri Railroad Co., Ozark, Franklin Co., Arkansas Station 6388+00 to Station 6440+80." ("Station and Structures Map") This Station and Structures Map is dated August 15, 1946 and is attached hereto as **Exhibit N** and incorporated herein.

36. **Exhibit N** specifically shows the MoPac Depot located in the downtown area of Plaintiff and a crossing at the location of the Oliver St. Crossing. The Oliver St. Crossing is labeled **pub. [Public] Xing 6406+84** and the Oliver St. Crossing also had a Xing sign 6406+35. Finally, the Station and Structures shows the $\frac{3}{4}$ " water line passing under the Defendant's railroad tracks just a few feet to the west of the **Public** Oliver St. Crossing and the water line is labeled 6407+10.

37. The first update to the Stations and Structures Map was made on November 11, 1947 when Defendant sold a parcel of real property in lot 9 and the Stations and Structures Map continued to be updated for approximately 41 years until the last reported update on August 5, 1987, which was a sale of real property to Donald R. and Bobbie J. Hurst on QCD. **See Exhibit N.**

38. During the entire 41 year period that the Stations and Structures Map was updated by the Defendant, the classification of the Oliver St. Crossing did not change,

and it remained classified as a **public at-grade crossing** on the Defendant's Stations and Structures Maps.

39. In approximately 1941, Plaintiff resident named Millard Rowe established a sawmill South of the Defendant's railroad tracks and utilized the Oliver St. Crossing to access his sawmill. Customers and family of Mr. Rowe utilized the Oliver St. Crossing and Plaintiff's Oliver St. to access Mr. Rowe's sawmill to purchase wood or to visit with Mr. Rowe. Mr. Rowe left to fight in WWII and he removed in his sawmill in approximately 1944. See Deposition page 10 and 16 of Dorothy Johnson who is the daughter of Millard Rowe, which are attached hereto as **Exhibit O** and incorporated herein.

40. Residents of the Plaintiff continued to utilize the city dump by taking loads of trash to the dump, going to the dump to shoot large rats, shoot turtles and gar at the mouth of Gar Creek, fish either in Gar Creek or Arkansas River where the Plaintiff was discharging raw sewage into the water, ride horses down by the Arkansas River all of which required residents to utilize Oliver St. to access the Oliver St. Crossing and then travel along Oliver St. to access the Plaintiff's dump, Gar Creek, the community of houses located at the mouth of Gar Creek, and the Arkansas River. See Deposition of Wallace Alston pages 11, 16, 18, 20 and 21, which are attached hereto as **Exhibit P-1** and incorporate herein; See Deposition of Byron Rex Anderson, pages 12-13 and pages 41-43, which are attached hereto as **Exhibit P-2** and incorporated herein; See Deposition of Jimmy Bearden pages 9-10, and 18, which are attached hereto as **Exhibit P-3** and incorporated herein; See Deposition of Bob Bonds pages 9-15, which are attached hereto as **Exhibit P-4** and incorporated herein; See Deposition of Alice Brooks

pages 9-10, which are attached hereto as **Exhibit P-5** and incorporated herein; See Deposition of Monty Canady pages 10-15, which are attached hereto as **Exhibit P-6** and incorporated herein; See Deposition of Ralph Johnson pages 11-15, which are attached hereto as **Exhibit P-7** and incorporated herein; See Deposition of Dorothy Johnson page 14, which is attached hereto as **Exhibit P-8** and incorporated herein; See Deposition of Brenda Mann page 8, which is attached hereto as **Exhibit P-9** and incorporated herein; See Deposition of Harold Pickartz pages 10 and 14, which are attached hereto as **Exhibit P-10** and incorporated herein; See Deposition of Andrew Post page 8, which is attached hereto as **Exhibit P-11** and incorporated herein; See Deposition of Loye Randolph pages 10-12, which are attached hereto as **Exhibit P-12** and incorporated herein; See Deposition of Philip Smith pages 8-9, and 11, which are attached hereto as **Exhibit P-13** and incorporated herein; See Deposition of Paul Stacy pages 10-11, which are attached hereto as **Exhibit P-14** and incorporated herein; See Deposition of Robert Trotter pages 11-12, which are attached hereto as **Exhibit P-15** and incorporated herein; See Deposition of Lonnie Turner pages 6-7, which are attached hereto as **Exhibit P-16** and incorporated herein; See Deposition of Don Whitson pages 8-9, and 12 which are attached hereto as **Exhibit P-17** and incorporated herein; See Deposition of Shirley Wilson pages 9-11, which are attached hereto as **Exhibit P-18** and incorporated herein; and See Deposition of Harrison Allred pages 27, 30-32, which are attached hereto as **Exhibit P-19** and incorporated herein.

41. In approximately 1952, a group comprised of Arlis Smith, a Mr. Flocks, and Kenneth Smith opened a pallet mill on land they leased from the Defendant that was in the approximate spot of Millard Rowe's sawmill. The new company was known

as F & S Lumber and was a government contractor that provided pallets to the government. F & S Lumber employed approximately 30-40 employees and operated two (2) shifts per day. All employees traveled on the Plaintiff's city street known as Oliver St., and utilized the Oliver St. Crossing to obtain access to the F & S Lumber company, which crossing was a normal crosstie crossing that led across the Defendant's railroad tracks and onto the gravel road known as Oliver St. The gravel road known as Oliver St., led to F & S Lumber, the Plaintiff's city dump and the houses located at the end of Oliver St. F & S Lumber used both long haul trucks that would cross the Oliver St. Crossing twice per day and also used railroad cars to ship their products. F & S Lumber erected two 50 x 150 foot buildings, which was used for production of their products. F & S did not seek permission to use the Oliver St. Crossing and based on the amount of traffic on Oliver St., Kenneth Smith, an owner of F & S Lumber, presumed the road was a public street and crossing. F & S Lumber did not build the road, as the road was already there prior to F & S Lumber relocating to the land South of the Defendant's railroad tracks. Further, Kenneth Smith was aware that someone had to maintain the road, as it did not deteriorate under the heavy traffic and F & S Lumber did not maintain the road. See Deposition of Kenneth Smith pages, 10-13, 18-20, 22-27, which are attached hereto as **Exhibit Q-1** and incorporated herein. Copies of various pictures dated 1952 and 1954, which all show Oliver St., the Oliver St. Crossing and the various structures located South of the Defendant's railroad tracks are attached hereto as **Exhibit Q-2, Exhibit Q-3, Exhibit Q-4, Exhibit Q-5 and Exhibit Q-6** and are all incorporated herein.

42. Harrison Allred was an employee of F & S Lumber at its location on Water or River St., North of the Defendant's railroad tracks and after approximately 4 to 6 months, Mr. Allred began work at the F & S Lumber facility located South of the Defendant's railroad tracks. In addition, individuals would bring 8-10 foot logs to F & S Lumber's facility by crossing the railroad tracks at the Oliver St. Crossing and traveling along the gravel road known as Oliver St. to the F & S Lumber sawmill. See Deposition of Harrison Allred pages 12-13 and 23-25, which are attached hereto as **Exhibit R** and incorporated herein.

43. In 1955, Peach Valley Gas Company ("Peach Valley") relocated its Butane Tanks to a new location that is east of the Defendant's Depot and to the South of the Defendant's railroad tracks. Peach Valley's employees utilized the Oliver St. Crossing and the gravel road known as Oliver St. to access the butane and propane stored in the tanks. See Deposition of Jimmy Bearden page 21 which is attached hereto as **Exhibit S-1** and newspaper cut out which is attached as **Exhibit S-2** and both are incorporated herein.

44. Harrison Allred began searching for steady employment as F & S Lumber was having layoffs due to inadequate supply of lumber and he obtained employment with Peach Valley in 1957. Mr. Allred worked continuously at Peach Valley from 1957 until he retired from Peach Valley in 1991. See Allred Deposition page 25 **Exhibit R**.

45. During the time that Mr. Allred worked at F & S Lumber and Peach Valley, he saw an employee of the Plaintiff grade the gravel road known as Oliver St. at least twice with an 8N Ford Tractor with a box blade on the back. In addition to maintaining the gravel road known as Oliver St., during the entire period of time that Mr. Allred

worked at Peach Valley (approximately 34 years), the Plaintiff's employees brush hogged the grass around Peach Valley's tanks. See Deposition of Harrison Allred pages 17, 26 and 32 which are attached hereto as **Exhibit T** and incorporated herein. Monty Canady also witnessed Plaintiff's employee maintain the gravel road known as Oliver St., as his uncle, Bull Southerland, was the Plaintiff's employee and Monty Canady observed him grading Oliver St. at least 3 to 4 times with the Plaintiff's 8N Ford Tractor and box blade. See Deposition of Monty Canady pages 19-20 which are attached hereto as **Exhibit U** and incorporated herein. See also deposition of Dorothy Johnson page 17, which is attached hereto as **Exhibit V** and incorporated herein.

46. Prior to the 1960s, most of the streets in the Plaintiff's downtown area were unpaved and did not have any street signs. See Deposition of Ralph Johnson page 17, which is attached hereto as **Exhibit W-1** and incorporated herein; See Deposition Truman Johnson page 12, which is attached hereto as **Exhibit W-2** and incorporated herein; See Deposition Philip Smith page 12, which is attached hereto as **Exhibit W-3** and incorporated herein; and See Deposition of Don Whitson page 15, which is attached hereto as **Exhibit W-4** and incorporated herein.

47. Although individuals heard street names, including the Oliver St. or the name of Oliver Lane, they mostly relied upon landmarks or individuals to give directions on how to get placed in Plaintiff's downtown area. See Dorothy Johnson Deposition **Exhibit P-8**; See Deposition Truman Johnson page 10, which is attached hereto as **Exhibit X-1** and incorporated herein; See Deposition Harold Pickartz page 17-18, which is attached hereto as **Exhibit X-2** and incorporated herein; See Deposition Andrew Post page 11, which is attached hereto as **Exhibit X-3** and incorporated herein; See

Deposition Joe Powell page 12, which is attached hereto as Exhibit **X-4** and incorporated herein; See Deposition Paul Stacy page 11-12 and 14, which are attached hereto as **Exhibit X-5** and incorporated herein; and See Shirley Wilson Deposition page 11 **Exhibit P-18**.

48. In the early 1960's, the Plaintiff paid for the preparation of a map of the Plaintiff's downtown area, which map was completed in February 1962 ("City Map"). This City Map clearly shows a city street entitled Oliver St., located east of the Defendant's Depot and traveling south across the Defendant's railroad tracks at the location of the Oliver St. Crossing and then turning and traveling east toward the mouth of Gar Creek. In addition, the City Map is more than likely the map that the local post office utilized to deliver mail to Plaintiff's residents. A copy of the February 1962 Map is attached hereto as **Exhibit Y-1** and incorporated herein and an enlarged map of the Oliver St. Crossing location is attached as **Exhibit Y-2** and incorporated herein. See Deposition of Robert Trotter page 18, 20 and 25, which are attached hereto as **Exhibit Y-3** as incorporated herein.

49. In addition to the City Map prepared in February 1962, Plaintiff also prepared a "City of Ozark, Arkansas House Number City Directory (the "Directory") that has an official date of March 1962. A copy of the Directory is attached hereto as **Exhibit Z** and incorporated herein.

50. According to the Directory, F&S was located at 211 Oliver St., and the Directory further lists six (6) residential addresses also located on Oliver St., with five (5) of those addresses being occupied. According to the Directory, the following individuals resided on Oliver St. as of March 1962 when the Directory was prepared: (a) Tom

Kuykendall at 217 Oliver St.; (b) Alfred Oliver at 221 Oliver St.; (c) Frank Oliver at 223 Oliver St.; (d) Berry Collins at 224 Oliver St.; and (e) Martin Oliver, Jr., at 225 Oliver St. (Martin Oliver, Jr., was the son of M. Oliver and Nelsie). 219 Oliver St. was shown as vacant in March 1962. Plaintiff's residents were aware of most if not all of these individuals residing on the gravel road known as Oliver St., which was located south of the Defendant's railroad tracks. See Deposition of Robert Trotter page 17 and 19, which are attached hereto as Exhibit **AA-1** and incorporate herein; See Deposition of Monty Canady page 15, which is attached hereto as Exhibit **AA-2** and incorporate herein; See Ralph Johnson Deposition Page 15 **Exhibit P-7** and incorporate herein; See Deposition of Harold Pickartz page 17-22, which are attached hereto as Exhibit **AA-3** and incorporate herein; and See Kenneth Smith Deposition page 24-25 **Exhibit Q-1**;

51. In 1962, the Ozark High School began working on preparing concrete pillars to begin placing street signs on streets in the Plaintiff's city limits, which corresponds with the Plaintiff's retaining the preparation of the City Map and the 1962 Directory. See Deposition of Lonnie C. Turner page 23-24, which are attached hereto as **Exhibit BB** and incorporated herein.

52. In approximately 1965, F & S Lumber ceased business operations South of the Defendant's railroad tracks, but the building remained on the leased property. See Kenneth Smith Deposition page 10 **Exhibit Q-1**. During the approximately 13 year existence of F & S Lumber, there were various grass fires and at least one structure fire at the F & S Lumber location wherein the Plaintiff's taxpayer funded fire department

responded to the fires. See Deposition of Robert Trotter pages 13, 23-24 and 27, which are attached hereto as **Exhibit CC** and incorporated herein.

53. After F & S Lumber ceased operations, the residences, the Plaintiff's city dump and Peach Valley all remained located on the gravel road known as Oliver St. South of the Defendant's railroad tracks. Residents of Plaintiff continued to utilize the city dump located South of the Defendant's railroad tracks throughout the 1960's. See Deposition of Steve Outlaw page 8-9, which are attached hereto as **Exhibit DD** and incorporated herein.

54. The Plaintiff had a separate map prepared in March 1965 entitled the Ozark, Arkansas Water Distribution System Arkansas Inspection & Rating Bur. ("1965 Water Distribution Map") This 1965 Water Distribution Map, clearly shows Oliver St., the Oliver St. crossing the Defendant's railroad tracks at the location of the Oliver St. Crossing, and also shows the location of the old ferry road public crossing that is not at issue in this civil matter. A copy of the 1965 Water Distribution Map is attached hereto as **Exhibit EE** and incorporated herein.

55. Also on April 12, 1965, Mickle Wagner Coleman, Engineers (formerly known as Mickle-Wagner Assoc., Inc.), which is the Plaintiff's engineering firm took an aerial photograph ("1965 Aerial Photo") of the location at issue in the civil matter and the entire downtown area of the Plaintiff. This 1965 Aerial Photo clearly shows Plaintiff's Oliver St., crossing over the Defendant's railroad tracks at the Oliver St. Crossing location. Further the 1965 Aerial Photo shows all of the structures located south of the Defendant's railroad tracks on the Plaintiff's Oliver St. A copy of the 1965 Aerial Photo is attached hereto as **Exhibit FF** and incorporated herein.

56. In 1963, the Corps began preparation and planned construction on the McClellan-Kerr Arkansas River Navigation System and Construction on the Lock and Dam began in 1967 and the Corps stated in press release regarding the construction that it anticipated completion of the Lock and Dam in the fall of 1969.

57. In March 1966, the U.S. Army Engineer District, Little Rock (the "Corps") prepared a Ozark Lock and Dam Relocations City of Ozark, Streets, Water Lines and Sewage Facilities Project Location Map ("March 1966 Relocation Map"). This Relocation Map was prepared in part due to the Corps ongoing construction of the Lock and Dam on the Arkansas River near the Plaintiff's downtown. The Relocation Map clearly shows the Plaintiff's Oliver St. road crossing the Defendant's railroad tracks at the location of the Oliver St. Crossing and also shows all of the propane tanks and other structures located south of the Defendant's railroad tracks. A copy of the Relocation Map is attached hereto as **Exhibit GG-1** and incorporated herein.

58. On June 1, 1968, the Corps filed a Condemnation action against 175.69 acres located in Crawford, Franklin, and Sebastian Counties of Arkansas and also filed a Lis Pendens against certain real property located in Franklin County, Arkansas including specific real property owners that resided on Oliver St. at the time of the condemnation proceeding. A copy of the Lis Pendens is attached hereto as **Exhibit GG-2** and incorporated herein.

59. The condemnation action and subsequent real property transfers were completed by the end of 1969 and the deeds transferred all of the real property located in south of the Defendant's right of way, owned by John Harlan Burns, Tom Kuykendall, and the Defendant respectively to the Corps. Each deed specifically provided that the

transfer was subject to existing easements for public roadways, which would include Plaintiff's gravel road known as Oliver St., and the at-grade public crossing known as the Oliver St. Crossing easement. A copy of the deeds are attached hereto as **Exhibit HH-1, HH-2, and HH-3**, all are incorporated herein. The Defendant specifically updated its Stations and Structures Map to reference that it sold all of tract 10 and part of tract 11. See **Exhibit N**.

60. Peach Valley remained at its current location and did not need to relocate. A copy of various google maps depicting the Oliver St. Crossing location beginning on March 13, 1994, prior to the Oliver St. Crossing removal (which occurred on February 4, 2001) and ending on October 26, 2012 are attached hereto as combined **Exhibit II** and incorporated herein. The Oliver St. Crossing is not blocked in the March 13, 1994 picture, but is blocked in all other pictures.

61. At about this same time in the late 1960 and early 1970s, the Federal Railroad Administration ("FRA") began a survey of all private and public railroad crossings in the United States for safety purposes. The FRA developed a Crossing Inventory that contains date and the location of the crossing, the amount and type of highway, train traffic, traffic control devices, and other physical elements of the crossing, including whether the crossing is public or private.

62. Data in the Crossing Inventory data is required to be kept current through the voluntary joint submission of information by the states and the railroads. According to the Federal Highway Administration "Railroad-Highway Grade Crossing Handbook" Revised Second Edition dated August 2007 (the "Handbook"), whenever a change occurs at a crossing, such as the installation of traffic control devices, the railroad or

state initiates an update form, which is approved by the non-initiating party. The submission involves completion of data elements that include: (1) effective date of change; (2) state; (3) county; (4) railroad; (5) and type of update, such as a change at an existing crossing, a new crossing, or a closed crossing.

63. According to the FRA's database, the existing, dedicated and platted Oliver St. Crossing was initially inventoried on January 1, 1970 as a public crossing and received a crossing inventory number of 434394S and has received the following updates:

- a. Originally surveyed and cataloged on January 1, 1970 and was initially classified as a public at-grade crossing, which corresponds with Union Pacific's own maps of this area showing this crossing as a public crossing and Plaintiff's factual statements regarding the use of the existing, dedicated and platted Oliver St. Crossing for approximately 94 years since the railroad tracks were laid in Plaintiff's city limits. In addition, the existing, Oliver St. Crossing was shown as having one (1) Crossbuck safety device;
- b. On January 2, 1982, the existing Oliver St. Crossing was updated showing the crossing as a "New Crossing" and maintained the crossing status as "public at-grade." The only apparent change to the classification was a second Crossbuck was added as a safety feature;
- c. On February 8, 1982, the existing Oliver St. Crossing was updated as a "changed crossing," but maintained the classification as **"public at-grade."** However, it is unclear from a review of the crossing inventory information form provided by the FRA what change occurred to the existing, dedicated and platted Oliver St. Crossing;
- d. On August 3, 1984, the existing Oliver St. Crossing was updated as a "changed crossing," but again maintained the status as **"public at-grade."** This update changed the existing Oliver St., Crossing highway information from a rural major collector to a rural local;
- e. On January 20, 1985, the existing Oliver St. Crossing was updated as a "changed crossing," but again the status as **"public at-grade"** was maintained. This update changed the "railroad information" from the 1970 initial number of 6 daily trains to the increased number of 12 daily trains.

The update also increased the "Day Thru:" from the 1970 initial number of 4 to the increased number of 6;

- f. On October 10, 1985, the existing Oliver St. Crossing was updated as a "changed crossing," but maintained the status as **"public at-grade."** However, it is not clear from the crossing inventory information form provided by the FRA what change occurred to the existing Oliver St. Crossing on this date;
- g. On March 14, 1986, the existing Oliver St. Crossing was updated for the purpose of **"closed crossing,"** but maintained the status as a **"public at-grade."** All other information remained the same;
- h. On March 9, 1991, the existing Oliver St. Crossing was updated as a **"new crossing,"** and the classification was established as a **"public at-grade."** This update also increased the train count to 18 and the Day Thru: up to 9. In addition, the Crossing Inventory form provided by the FRA had new information not previously provided, (a) the AADT Year of 1991 is shown on this form; (b) the type of crossing is listed as timber; and (c) a nearby intersection being less than 75 feet away is listed. This updated form also had the existing Oliver St. Crossing having a private sign listed, which is believed to be a stop sign. No other information was provided;
- i. On October 21, 1996, the existing Oliver St. Crossing was updated for the purpose of "changed crossing," but maintained the status as **"public at-grade."** This update also increased the total daily trains to 23 and the Day Thru: to 12. The form also updated the train activated safety devices section of the form;
- j. On January 15, 2001, the existing Oliver St. Crossing was updated as a "changed crossing," but maintained the status as **"public at-grade."** This update also provided that both Crossbuck safety features that had been at the existing Oliver St. Crossing since 1982 were both removed and replaced by two (2) highway stop signs;
- k. Finally, on February 23, 2001, the existing Oliver St. Crossing was updated a final time as **"closed crossing,"** but maintained the status as "public at-grade." According to the Crossing Inventory form, both stop signs were still at the location when it was closed in February 2001.

64. A copy of the FRA Crossing Inventory reports and a digital map printed from the FRA's website showing the public Oliver St. Crossing are attached hereto as **Exhibit JJ-1 and JJ-2**, and are incorporated herein.

65. Beginning in 1970, there were no longer any residences located south of the Defendant's railroad tracks, but the Plaintiff's residents continued to utilize the public Oliver St. Crossing and the remaining portion of Plaintiff's gravel road known as Oliver St., to access the property owned by the Corps for various reasons such as: (1) fishing; (2) hiking; (3) various shooting activities (i.e., skeet, snakes, gars, etc.); and (4) sightseeing, especially when the Lock and Dam was first constructed.

66. Further, Peach Valley's employees and Peach Valley mechanics continued to utilize the Oliver St. Crossing from 1970 until 2001, when Peach Valley relocated to North 23 Hwy. See Deposition of Philip Smith page 16 which is attached hereto as **Exhibit KK-1** and incorporated herein; and See Deposition of Bill Brockett page 9 and 11, which are attached hereto as **Exhibit KK-2** and incorporated herein.

67. In 1975, the Plaintiff had a new map prepared by the Western Arkansas Planning and Development District, Inc., Fort Smith, Arkansas ("1975 Map"). This 1975 Map clearly shows the Oliver St. crossing the Defendant's railroad tracks at the Oliver St. Crossing, location. A copy of the 1975 Map is attached hereto as **Exhibit LL** and incorporated herein.

68. In 1976, the Ozark Chamber of Commerce ("1976 Map") prepared and published a City Map of Ozark, Arkansas, which utilized the 1975 Map to list out the various streets and points of interest in the Plaintiff's downtown area and surrounding communities. The 1976 Map contains a street index that specifically lists Oliver St., as a city street. A copy of the 1976 Map is attached hereto as **Exhibit MM** and incorporated herein.

69. In 1980, the Arkansas State Highway and Transportation Department provided an additional map to the Plaintiff which was dated April 1980 ("1980 AH&TD Map"), and this 1980 AH&TD Map shows the location of the Oliver St. that crosses the Defendant's railroad tracks at the Oliver St. Crossing location. A copy of this 1980 AH&TD Map is attached hereto as **Exhibit NN** and incorporated herein.

70. In September 1980, Mickle-Wagner Assoc., Inc., prepared a Bike Route map for the Plaintiff that also shows Oliver St., and clearly shows Oliver St. crossing the Defendant's railroad tracks at the Oliver St. Crossing location. A copy of this 1980 Mickle-Wagner Assoc., Inc., Bike Route map is attached hereto as **Exhibit OO** and incorporated herein.

71. In 2000, the Defendant's office of real estate had a Map prepared dated 1-21-2000, which shows the depot and the land around the depot as sold to the Plaintiff and also shows a crossing at the Oliver St. Crossing location with the same crossing number of 6406+84 and the public crossing sign of 6406+95, as these were the numbers that were originally created in 1916 and 1946 respectively. A copy of the 2000 Map showing the Depot and Oliver St. Crossing location is attached hereto as **Exhibit PP-1** and a Deposition of Vernon McDaniel, pages 29-30, discussing the donation of the Depot and sale of the land around the Depot for \$1.00 while he was mayor, which are attached hereto as **Exhibit PP-2** and incorporated herein.

72. In 2001, without any vote of the Plaintiff's city council, the Oliver St. Crossing was removed by the Defendant either unilaterally or at the request of a former mayor of the Plaintiff, Todd Timmerman, who did not have the authority to seek the removal of the Oliver St. Crossing. However, it is undisputed that the Plaintiff's city

council did not vote to approve an ordinance to remove or abandon the Plaintiff's gravel road known as Oliver St., or the abandon or release the Plaintiff's at-grade crossing easement known as the Oliver St. Crossing. See Deposition of Byron Rex Anderson page 25 through 28 and 49 and 50 and 52, which are attached hereto as **Exhibit QQ-1** and incorporated herein; See Deposition of Jesse Thomas Edgin pages 20, 26-28, and 38, which are attached hereto as **Exhibit QQ-2** an incorporated herein; See Deposition of Roxie Hall pages 18, 20, 26-27, 41-43 which are attached hereto as **Exhibit QQ-3** an incorporated herein; See Deposition of TR McNutt pages 149 and 150, which are attached hereto as **Exhibit QQ-4** an incorporated herein; See Deposition of John Milam pages 35-38, which are attached hereto as **Exhibit QQ-5** an incorporated herein.

LAW AND ANALYSIS

73. Based on the above undisputed facts and pursuant to the provisions of Rule 56 of the Federal Rules of Civil Procedure, the Plaintiff asserts and alleges that it is entitled to a judgment as a matter of law as to Count I of the Complaint as the gravel road known as Oliver St., was a city street of the Plaintiff and the clear undisputed evidence, including the Defendant's own maps, shows that the Oliver St. Crossing was a public at-grade crossing.

74. The Plaintiff asserts that it is entitled to a judgment as a matter of law against the Defendant, as the Defendant illegally removed a public at-grade crossing known as the Oliver St. Crossing and has illegally prevented the Plaintiff and the Plaintiff's residents from crossing the Defendant's railroad tracks and accessing the Plaintiff's leased property located South of the Defendant's railroad tracks on the North shore of the Arkansas River.

75. There is no defense that the Defendant can raise at this time to defeat the Plaintiff's claim to have the Oliver St. Crossing reestablished as a public at-grade crossing, as the Defendant did not have the authority, by an affirmative vote of the Plaintiff's city council approving an ordinance to close and abandon the Plaintiff's Oliver St., and to abandon or release the at-grade Oliver St. Crossing easement.

76. A Brief in Support of Defendant's Motion for Summary Judgment, is being filed contemporaneously with this Motion and the arguments set out therein are incorporated into this Motion by reference, word for word, as if actually set forth herein again.

WHEREFORE Plaintiff, the City of Ozark, prays that this Court grant Judgment in favor of Plaintiff against the Defendant, finding as follows:

A. The gravel road known as Oliver St., is a public city street of the Plaintiff and the at-grade crossing known as the Oliver St. Crossing was and is a public at-grade railroad track crossing easement that was established in 1876 and was illegally removed by the Defendant without authority in February 2001;

B. That a Permanent Injunction is issued against the Defendant to permanently enjoin the Defendant from any further interference of the Plaintiff's use of the public at-grade crossing known as the Oliver St. Crossing; and

C. The Defendant is liable for Plaintiff's reasonable attorney's fees, costs, expenses and all other relief to which Plaintiff may be entitled.

Respectfully submitted:

By: /s/ Christopher D. Brockett
Christopher D. Brockett
Ark. Bar No. 2005192
Sayre & Brockett
401 West Commercial Street
Ozark, Arkansas 72949
Telephone (479) 667-3000
Facsimile (479) 667-4188
Email: cbrockett@bslawarkansas.com

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

I, Christopher D. Brockett, hereby certify that a copy of the foregoing Amended Complaint has this date been served by U.S. Mail on the following:

Scott H. Tucker
Friday, Eldredge & Clark, LLP
400 W. Capitol Ave., Suite
2000
Little Rock, Arkansas 72201-
3522
Telephone: (501) 370-1430
Facsimile: (501) 244-5340
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Facsimile: (501) 244-5340
Email: jjones@fridayfirm.com

Done at Ozark, Arkansas, this 30th day of April 2015.

/s/ Christopher D. Brockett
Christopher D. Brockett

TABLE OF EXHIBITS

- Exhibit A-1: Copy of deed from WM Hail to William Cureton
- Exhibit A-2: Copy of deed transferring land from James F. Quaile and Frauk A. Quaile to Little Rock and Fort Smith Railway on March 14, 1876
- Exhibit B: Copy of deed from John Hail & Sarah to William Hail
- Exhibit C: Copy of deed from William Cureton to James F. Quaile
- Exhibit D: Copy of deed from J.V. Boourland & Bonnie J. to Samuel Church
- Exhibit E: Deed from Samuel Church to Jinnie to J.V. Bourland
- Exhibit F: Deed from J.V. Bourland and Bonnie J. to Redmond R. Walting
- Exhibit G: A copy of deed from Julia Walting to Martin Oliver
- Exhibit H: A copy of a picture of the downtown area showing residences on the south side of the Defendant's tracks prior to the construction of the new Depot
- Exhibit I: MoPac Track Right of Way Map, June 30, 1916, Pages 1-15
- Exhibit J: A copy of Small Estate Affidavit of Nelsie Oliver
- Exhibit K-1: June 5, 1940 Minutes from City Council
- Exhibit K-2: May 8, 1951 Minutes from City Council
- Exhibit K-3: December 11, 1956 Minutes from City Council
- Exhibit K-4: December 22, 1957 Minutes from City Council
- Exhibit L: Deposition of Monty Canady Page 19
- Exhibit M-1: A copy of the Ordinance dated October 13, 1942
- Exhibit M-2: A copy of the blue print
- Exhibit M-3: Deposition of Harold Pickartz Page 25-26
- Exhibit M-4: Deposition of Jimmy Bearden Page 19
- Exhibit M-5: Picture showing 1942 Railroad spurs
- Exhibit M-6: Picture showing Depot & Crossing
- Exhibit M-7: Close up view of Oliver St. Crossing with vehicle at the crossing
- Exhibit N-1: Station and Structures Map, August 15, 1946, Pages 1-12
- Exhibit N-2: Enlarged Version of the Station and Structures Map, August 15, 1946, Pages 1-15

- Exhibit O: Deposition of Dorothy Johnson Pages 10 and 16
- Exhibit P-1: Deposition of Wallace Alston Pages 11, 16, 18, 20 and 21
- Exhibit P-2: Deposition of Byron Rex Anderson Pages 12-13, pages 41-43
- Exhibit P-3: Deposition of Jimmy Bearden Pages 9, 10, and 18
- Exhibit P-4: Deposition of Bob Bonds Pages 9-15
- Exhibit P-5: Deposition of Alice Brooks Pages 9 and 10
- Exhibit P-6: Deposition of Monty Canady Pages 10-15
- Exhibit P-7: Deposition of Ralph Johnson Pages 11-15
- Exhibit P-8: Deposition of Dorothy Johnson Page 14
- Exhibit P-9: Deposition of Brenda Mann Page 8
- Exhibit P-10: Deposition of Harold Pickartz Pages 10 and 14
- Exhibit P-11: Deposition of Andrew Post Page 8
- Exhibit P-12: Deposition of Loye Randolph Pages 10-12
- Exhibit P-13: Deposition of Philip Smith Pages 8, 9 and 11
- Exhibit P-14: Deposition of Paul Stacy Pages 10 and 11
- Exhibit P-15: Deposition of Robert Trotter Pages 11 and 12
- Exhibit P-16: Deposition of Lonnie Turner Pages 6 and 7
- Exhibit P-17: Deposition of Don Whitson Pages 8, 9 and 12
- Exhibit P-18: Deposition of Shirley Wilson Pages 9-11
- Exhibit P-19: Deposition of Harrison Allred Pages 27, 30-32
- Exhibit Q-1: Deposition of Kenneth Smith Pages 10-13, 18-20, 22, 23-27
- Exhibit Q-2: Copy of picture dated 1952
- Exhibit Q-3: Zoomed in version of Copy of picture dated 1952
- Exhibit Q-4: Copy of picture dated 1954
- Exhibit Q-5: Zoomed in version showing structures on South side of railroad crossing
- Exhibit Q-6: Substantially zoomed in version showing structures on South side of railroad crossing
- Exhibit R: Deposition of Harrison Allred Pages 12, 13, 23 and 25

- Exhibit S-1: Deposition of Jimmy Bearden Page 21
- Exhibit S-2: Picture of 1955 Butane Tanks Move
- Exhibit T: Deposition of Harrison Allred Pages 17, 26 and 32
- Exhibit U: Deposition of Monty Canady Pages 19 and 20
- Exhibit V: Deposition of Dorothy Johnson Page 17
- Exhibit W-1: Deposition of Ralph Johnson Page 17
- Exhibit W-2: Deposition of Truman Johnson Page 12
- Exhibit W-3: Deposition of Philip Smith Page 12
- Exhibit W-4: Deposition of Don Whitson Page 15
- Exhibit X-1: Deposition of Truman Johnson Page 10
- Exhibit X-2: Deposition of Harold Pickartz Page 17 and 18
- Exhibit X-3: Deposition of Andrew Post Page 11
- Exhibit X-4: Deposition of Joe Powell Page 12
- Exhibit X-5: Deposition of Paul Stacy Page 11, 12 and 14
- Exhibit Y-1: A copy of the February 1962 Map
- Exhibit Y-2: Enlarged Version of the February 1962 Map
- Exhibit Y-3: Deposition of Robert Trotter Page 18, 20 and 25
- Exhibit Z: A copy of the Directory dated March 1962
- Exhibit AA-1: Deposition of Robert Trotter Page 17 and 19
- Exhibit AA-2: Deposition of Monty Canady Page 15
- Exhibit AA-3: Deposition of Harold Pickartz Page 2, 20 and 21
- Exhibit BB: Deposition of Lonnie Turner Page 23 and 24
- Exhibit CC: Deposition of Robert Trotter Page 13, 23, 24 and 27
- Exhibit DD: Deposition of Steve Outlaw Pages 8 and 9
- Exhibit EE: A copy of the 1965 Water Distribution Map
- Exhibit FF: A copy of the ariel photo from 1965 with enlargement behind
- Exhibit GG-1: Relocation Maps from Ozark Lock and Dam, March 1966
- Exhibit GG-2: Copy of the Lis Pendens from June 1, 1968

Exhibit HH-1: A copy of John Burns deed

Exhibit HH-2: A copy of MOPAC's deed

Exhibit HH-3: A copy of Tom Kirkendoll's deed

Exhibit II: Google Maps showing the crossing

Exhibit JJ-1: FRA Crossing Inventory Reports 1970-2001

Exhibit JJ-2: FRA Crossing Inventory Reports Digital Map from Website

Exhibit KK-1: Deposition of Philip Smith Page 16

Exhibit KK-2: Deposition of Bill Brockett Page 9 and 11

Exhibit LL: A copy of the 1975 Map, Pages 1-6

Exhibit MM: 1976 Arkansas Map with a street index, Pages 1-12

Exhibit NN: A copy of the 1980 AH&TD Map, Pages 1-3

Exhibit OO: A copy of the 1980 Mickle-Wagner Assoc., Inc. Bike Route Map, Pages 1-3

Exhibit PP-1: Union Pacific's 2000 Map

Exhibit PP-2: Deposition of Vernon McDaniel, Pages 29 and 30

Exhibit A-1

Copy of deed from WM Hail to William Cureton

83

Old RECORD 6

PAGE 144-5

Con: \$1000 ✓	Date 3 17 38	Reg. Rec ✓	Dow. In D.	N. P.
Lien —	Ack. " 19 "	Def. Below	Dow. " A.	J. P. ✓
Int. Con. All Pl.	Filed # Not shown	All Ack.	H'ms't'd D.	Clk
Co. Seal	Co. Ex.	Of. Seal	H'ms't'd A.	Wife Ex.

W^m Nail

To

William Cureton

Subject to —

Comp. by

NE				NW				SE				SW				Sec.	Twp.	Range	Acres
N	E	S	W	N	E	S	W	N	E	S	W	N	E	S	W				
"all that fraction of the SW 1/4 of Sec. 36 in T. 16. R. 27 W. which is not em- braced by a lot off and designated as the tract on which O'ard is situated"																			✓
Copy of Ack: - "Signed and acknowledged ✓ before me this 19 th day of March 1838 E. B. Burland J. A."																			
# Recorded Aug. 24 th 1838.																			✓

Exhibit A-2

Copy of deed transferring land from James F. Quaile and Frauk A. Quaile
to Little Rock and Fort Smith Railway on March 14, 1876

INST. *Q C Deed* RECORD *Ly*PAGE *447*

Con.	Date	1876	3	14	Reg.	Dow. in D	N. P.
Lien	Ack.	✓	✓	✓	Def.	Dow. in A	J. P.
Int. Con. All. Pt.	Filed	1876	5	27	All Ack.	H'ms't'd D	Cl'k
Co. Seal	Time				Of. Seal	H'ms't'd A	Wife Ex.

James F. Quail & Frank A. Quail
his wife
to
Little Rock and Fort Smith Railway

Grant, Bargain, Sell and Convey and Confirm; Release and Forever Quit Claim;
 Subject to

NE	NW	SE	SW	Franklin County, Ark.
NE NW	SE NW	NE NW	SE NW	NE NW
SE	SW	SE	SW	SE
36	10	27		

beginning at a stone that bears
 S 64° $24'$ 67 feet from a stone
 set on the production of the south
 side of Mason Street at the distance
 of eleven hundred feet S $83\frac{1}{2}^{\circ}$ E
 from the north-west corner of Block
 Three in the town of Galt, County
 of Franklin, State of Arkansas
 and running S $6\frac{1}{4}^{\circ}$ E 383 feet
 to a stone thence S $68\frac{1}{4}^{\circ}$ E 672 feet
 to a stone on the East boundary
 line of the South East Quarter of T28
 South west Quarter of Map 36.20 of
 10 N Range 27 West. Thence
 north along said boundary line
 393 feet to a stone, and thence
 N $68\frac{1}{4}^{\circ}$ W 630 feet to point of
 beginning by 5.50 and more or
 less

Conditioned on the establishment
and permanent maintenance of a
depot for the Town of Oak on
said tract of land, and upon
the further conditions that 60 feet
on the west and north of said
five and one half acres is to remain
unobstructed for a street or public
highway, etc.

D. H. Ross Clerk
Franklin Co. Ark.

Exhibit BB

Deposition of Lonnie Turner Page 23 and 24

1 it. That's the way I remember it.

2 Q. Okay.

3 A. Or at least that's my knowledge of it. But
4 there is some pictures of that, all of that area,
5 taken off the top of Randall Lee Mountain (phonetic)
6 up here.

7 Q. Yes, sir.

8 A. And then there is some more of them down here
9 in that barbecue place right now, or it was a couple
10 of months ago whenever I ate down there.

11 Q. Oh, okay. What about houses, are you aware if
12 anybody lived down there?

13 A. There were some houses right down there. I
14 don't remember who.

15 Q. Okay.

16 A. Gary Collins lived -- I don't remember whether
17 he lived on Chrisman's side of the tracks or whether
18 he lived on the back side of the tracks.

19 Q. Okay. When you were -- Exhibit D to the --
20 Exhibit D to Exhibit 51 is notated as the City of
21 Ozark Arkansas house numbers, March of 1962. Have
22 you ever seen a document like that before?

23 A. No.

24 Q. Okay.

25 A. 1962 is when I graduated from high school.

Page 24

1 That would have been when we would have been working
2 on those things.

3 Q. Okay. All right. But you don't remember
4 seeing anything like that?

5 A. No.

6 Q. Okay. And on that second page it lists Oliver
7 Street with some names on there. Do any of those
8 names sound familiar as people that would have lived
9 south of the railroad tracks?

10 A. Not to me. Now, I knew Tom Kirkendall, but I
11 didn't know where he lived.

12 Q. Okay.

13 A. And I knew Barry Collins.

14 Q. Okay. Do you know if either of those are
15 stilled living?

16 A. No. They are all dead.

17 Q. Okay.

18 A. Barry shot and killed somebody down there.

19 Q. South of the railroad tracks?

20 A. Wherever he lived down there.

21 Q. Okay.

22 A. Who is the "F" in that F&S?

23 Q. A gentleman by the name of Flocks.

24 A. No.

25 MR. BROCKETT: Okay. I think that's

1963
name
on
street
name

Exhibit C

Copy of deed from William Cureton to James F. Quaile

INST. *N.D.* *Old* RECORD *18* PAGE *567-8*

Con. \$ <i>500</i>	Date <i>11. 6. 55</i>	Reg. <i>✓</i>	Dow. in D.	N. P.
Lien	Ack. <i>11. 6. 55</i>	Dot.	Dow. " A.	J. P.
Int. Con. All Pt.	Filed <i>11. 6. 55</i>	All Ack.	H'ms't'd D.	C'k <i>✓</i>
Co. Seal	Co. Ex.	Of. Seal	H'ms't'd A.	Wife Ex.

William H. Curdton
James F. Quail

Subject to —

Comp. by

NE				NW				SE				SW				Sec.	Twp.	Range	Acres
N	E	S	W	N	E	S	W	N	E	S	W	N	E	S	W				
												E	E	36	10	27			
<i>By which mabb. does stood on it</i> <i>Public Art R. (which is mentioned as a</i> <i>con. tree in a deed made from William</i> <i>Thail & Anshamab. his wife to David</i> <i>Walker & Archibald Jell for the land</i> <i>on which the house of David was the</i> <i>Co. & State of Iowa is situated, which is</i> <i>designated on the plat of the survey</i> <i>of public lands as the</i> <i>36 10 27)</i> <i>This is to the boundary line of the</i> <i>sd. 14 sec. Th. E. with sd. Northern</i> <i>boundary line to the cor. sd. 14 sec.</i> <i>Sec. Th. S. with the line between the</i> <i>S.E. & S.W. 14 - 36 - to Art. R.</i> <i>Th. N. with the mean. sd. Art. R.</i> <i>to beg. so as to include all the</i> <i>land to the water edge</i> <i>Conty. 43 75 2</i> <i>By A. L. Perry et al</i>																			

Exhibit D

Copy of deed from J.V. Bourland & Bonnie J. to Samuel Church

J. V. Boulevard & Bonnie J.
To
Samuel Church

Comp. by

NE		NW		SE		SW		Sec.	Twp.	Range	Acres				
NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	*			
xxxxxxx Pt SW SW								36	10	27	xxxx ¹⁹ / _✓				
xxxxxxx															
Near & N. of the mouth of Gar Cr. Bound. on S. by Ark. riv. on the N. by the track of L.R. & F.S. Ry. on the E. by a parcel of land deed by J. C. Snider to <u>John & Carmelia Church</u> , on the W. by a parcel of land owned by other persons Conty. xxxxxxx ¹ / ₄ of ¹ / ₂ acres formerly owned by N Barclift. An und ¹⁴ m ² . conveyed.															
								S	36	10	27				

Exhibit E

Deed from Samuel Church to Jinnie to J.V. Bourland

229		PAGE 316-317	
INST. <i>W. H.</i>	RECORD <i>J</i>		
Con. \$ <i>50.</i> ✓	Date <i>9 20 94</i> Reg. ✓	Dow. in D. ✓	N. P. ✓
Lien —	Ack. " " " Def.	Dow. " A. ✓	J. P.
Int. Con. All Pt.	Filed <i>9 20 94</i> All Ack. ✓	H'ms't'd D. ✓	Cl'k
Co. Seal	Co. Ex.	Of. Seal ✓	H'ms't'd A. ✓ Wife Ex. ✓

Samuel Church & Jinnies
To
J. V. Bourland

Subject to —		Comp. by	
NE	NW	SE	SW
Sec.	Twp.	Range	Acres
36	10	27	3 1/2
<i>S. of the Ry. at the mouth of Gar Creek</i> <i>and being all the land where I now live, and all the land I own in the incorporated town of Ozark Ark, and South of the Ry. at the mouth of Gar Creek, and rather between the mouth of said creek and the Ark River</i> <i>Husband also release H mustead in ack.</i> <i>B. M. Sutherland, F. Co.</i>			

Exhibit F

Deed from J.V. Bourland and Bonnie J. to Redmond R. Walting

127
RECORD *W*

INST. *W. W.* PAGE 166. - 7

Con. \$/75.00	* Date	2 28 96	Reg. ✓	Dow. in D. *	N. P.
Lien -	Ack. "	" "	Def.	Dow. " A.	* J. P.
Int. Con. All Pt.	Filed	2 28 96	All Ack. *	H'ms't'd D. *	Cl'k*
Co. Seal	Co. Ex.		Of. Seal *--	H'ms't'd A. *	Wife Ex. -

*J. V. Bourland & Bonnie J.
To
Redmond R. Walting*

Subject to -				Comp. by				Sec. Twp. Range	Acres *
NE	NW	SE	SW	NE	NW	SE	SW		
NE NW SE SW	NE NW SE SW	NE NW SE SW	NE NW SE SW	NE NW SE SW	NE NW SE SW	NE NW SE SW	NE NW SE SW		
								36 10 27	3.50 1/4
									or 1
<i>being & being in the incorporated town of Clark and being S. of Ft. S. & R. Ry. at the mouth of Gas Creek or between Ry. & Ark. River & being land purchased by me from Samuel Church Sept. 20-94</i>									
1									
B4 T C Moore Co Clk F Co.									

Exhibit G

A copy of deed from Julia Walting to Martin Oliver

INST. WD RECORD "V" PAGE 139

Con. \$1.00 over	Date	6	29	00	19	Reg. *	Dow. in D.	N. P.
Lien	Ack.	"	"	"	"	Def.	Dow. in A.	J. P.
Int. Con. All Pt.	Filed	"	30	"	"	All Ack.	H'ms't'd D.	Cl'k. *
Co. Seal	Time					Of. Seal	H'ms't'd A.	Wife, Ex.

JULIA WALTING

TO

MARTIN OLIVER

Grant, Bargain, Sell and Convey and Confirm; Release and Forever Quit Claim.
Subject to See Deed "D", page 166

NE				NW				SE				SW				Franklin County, Ark.			
NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	SEC.	TWP.	RANGE	ADRES
Lot No. 2 Beginning at a corner on the South side of Main Street in Ozark, Ark., on the West side of the Little Rock & Ft. Smith Railway lands, thence from said corner, South 120 Feet; thence West 60 feet; thence North 20 feet; thence East 60 feet to the place of beginning, same being a part of the Southwest Fractional Quarter of the lands formerly owned by Sarah C. Cole.																36	10	27	

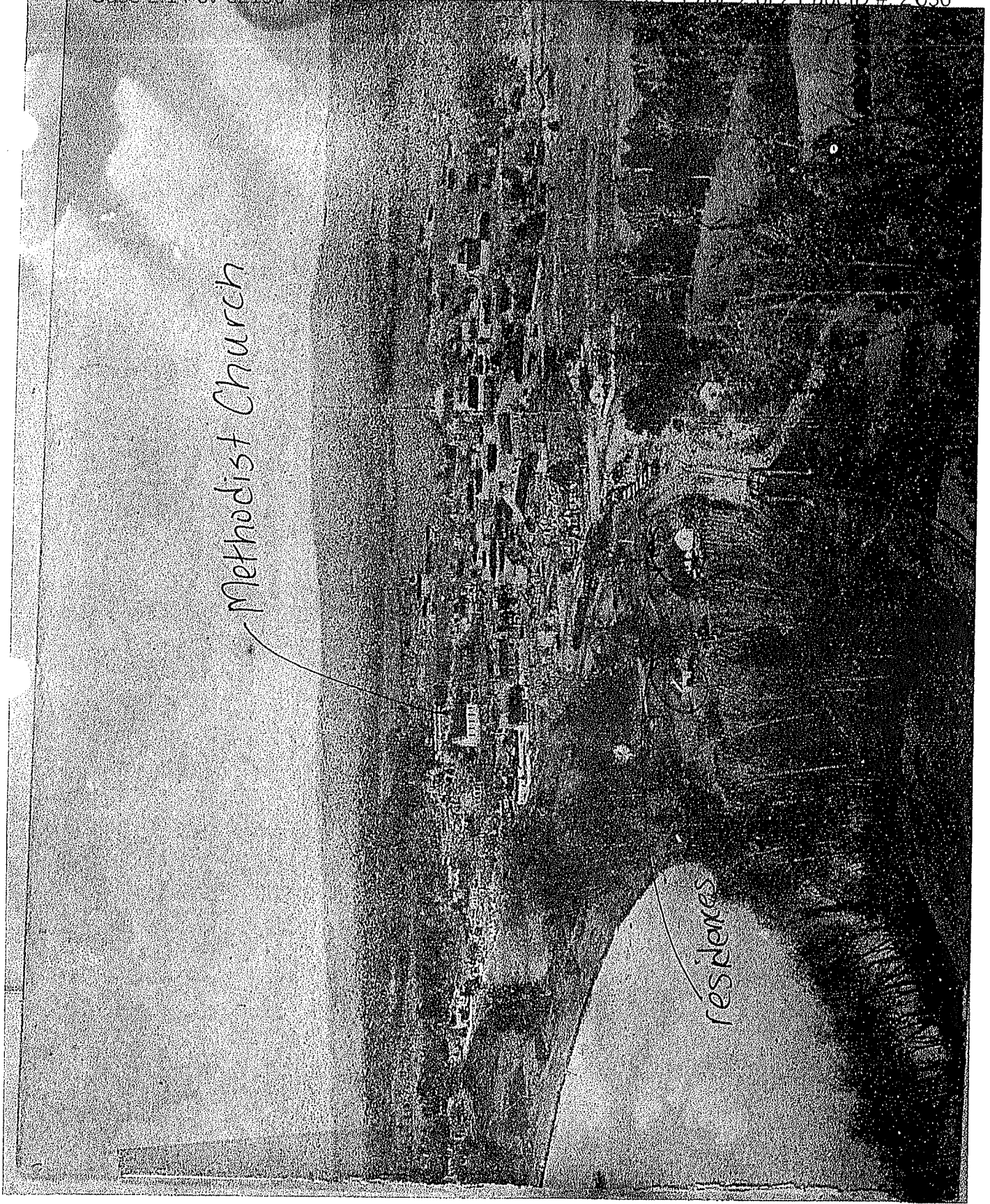
ALSO

Part of the SW/4 of the SE/4 of in Ozark, Ark; South of the Little Rock & Ft. Smith Railway at the mouth of Gar Creek and between the railway & the Arkansas River, being lands formerly owned by Samuel Church being lands conveyed by R. R. Walting by will to me and Janice Cunningham. I hereby intend to convey my undivided one-half interest in all said lands.

OVER

Exhibit H

A copy of a picture of the downtown area showing residences
on the south side of the Defendant's tracks prior to the
construction of the new Depot



Early 1900's