

**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, TLB AND THE ARKANSAS STATE HIGHWAY COMMISSION	)	CIVIL ACTION NO:2:14-CV-02196-
	)	
	)	
Defendants,	)	

**PLAINTIFF'S SUPPLEMENT EXHIBITS TO THE 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 Supplement Exhibits to the Plaintiff's Motion for Partial Summary Judgment filed herein on and even date herewith and does file Exhibit W through Exhibit Z as shown on the attached Table of Exhibits.

Respectfully submitted:

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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:

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

/s/ Christopher D. Brockett
Christopher D. Brockett

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- Exhibit A-1: Copy of deed from WM Hail to William Cureton
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- 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
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- Exhibit F: Deed from J.V. Bourland and Bonnie J. to Redmond R. Walting
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Exhibit W-1

Deposition of Ralph Johnson Page 17

1 A. Just go down and go into the dump. That was
2 it.

3 Q. Okay. And what about the other streets
4 downtown, did they have names, or did you just kind
5 of know where to go?

6 A. I knew where to go.

7 Q. Okay.

8 A. We didn't have signs on any of the, any of
9 the -- any of the streets had no signs on them. We
10 just knew where they were and what they were.

11 Q. Okay. While you were in the abstract business
12 did you ever need to find an ordinance adopting any
13 of the streets downtown?

14 A. No.

15 Q. Do you know if there are any ordinances
16 adopting the streets downtown?

17 A. I'm not aware of any.

18 Q. Okay. Would that have been something that was
19 in your records?

20 A. Not in our records, no.

21 Q. Okay.

22 A. It would have been in the city records or
23 something like that, but not in the abstract office,
24 huh-uh.

25 Q. Okay.

Exhibit W-2

Deposition of Truman Johnson Page 12

1 A. That's what they used to put the wires and
2 things on back early, you know, the electric wires.

3 Q. Okay.

4 A. And the telephone.

5 Q. Okay.

6 A. And they paid for 200 acres.

7 MR. BROCKETT: Let's go off the record
8 for a moment.

9 (Off-the-record discussion.)

10 BY MS. JONES:

11 Q. We went off the record to get kind of on the
12 same page. Now as I understand it, Mr. Johnson, you,
13 you assisted in cutting down some cedar trees that
14 were then loaded up in a truck that went across that
15 crossing and were put on a train over there east of
16 the depot; is that right?

17 A. That's right.

18 Q. Okay. And you didn't go across the crossing
19 yourself. Somebody else did that?

20 A. No, I was with dad.

21 Q. You were with dad, okay. So your dad --

22 A. Yeah.

23 Q. Do you remember about what year or what decade?
24 You were a kid; right?

25 A. I was just a kid.

Exhibit W-3

Deposition of Philip Smith Page 12

1 Q. Okay. So you know because there was a sign
2 that had been put up?

3 A. Yeah.

4 Q. Okay. In the last few years?

5 A. I pretty much knew where the railroad track
6 crossing was over the years.

7 Q. Right. But you didn't call it Oliver Street?

8 A. No, ma'am.

9 Q. You didn't, you didn't know necessarily that
10 anyone called it Oliver Street until there was a sign
11 within the last few years put up there?

12 A. That's correct.

13 Q. Okay.

14 A. But most of the streets in this town didn't
15 have the name on it either.

16 Q. Right. And you wouldn't have any personal
17 knowledge as to whether or not Oliver Street was
18 actually located where that, where they put the
19 street sign?

20 A. No, ma'am.

21 Q. Okay.

22 A. I would not.

23 Q. Do you remember signing a statement in about
24 2012?

25 A. Yes, ma'am.

Exhibit W-4

Deposition of Don Whitson Page 15

1 the city dump, how would you tell me to get there?

2 A. Well, from my house I would have said go down
3 to, which is on 23 Highway, go down to Junction 64
4 Highway, go east down to, I'm not sure what that
5 street number is down there, what street it is where
6 that's, whether that's Bell -- I'm not sure. It's
7 the same street now that the post office down here
8 sits on the corner right now.

9 Q. Okay.

10 A. And if you come off of that street that's
11 headed south, in other words, you would, you would --
12 from there you would go across the, across the
13 tracks.

14 Q. Okay. Would you have used, would you have used
15 more landmarks versus street names back then? And
16 I'm talking back in the fifties and sixties when you
17 would have actually used it.

18 A. Well, some of those, you know, some of those
19 streets, and they all had numbers, but there
20 wasn't -- there was a lot of places where streets
21 were not marked.

22 Q. Okay.

23 A. I mean, the streets were gravel, as far as that
24 goes.

25 Q. So most of the streets back then were gravel?

Exhibit X-1

Deposition of Truman Johnson Page 10

1 A. Dozer operator mostly.

2 Q. Okay. For what company?

3 A. Well, I had Matt Post (phonetic), and now I'm
4 doing work for Eddie Vela (phonetic).

5 Q. Okay. Have you ever been a member of the Ozark
6 city council?

7 A. No.

8 Q. Have you ever been a member of an organization
9 called Main Street Ozark?

10 A. Huh-uh.

11 Q. Okay.

12 A. No.

13 Q. Have you done any help with this lawsuit where
14 you have helped write the Complaint or given facts
15 for the Complaint or anything like that?

16 A. Huh-uh.

17 Q. Okay. So "no"?

18 A. No.

19 Q. Okay. So let's go back. We were talking about
20 the crossing, and you were telling me that you had,
21 when you were a kid had gone over with your dad to
22 do, to go to the dump. Is that right?

23 A. Well, no. That's the way we paid for 200 acres
24 of ground, big long cedars.

25 Q. Okay.

Exhibit X-2

Deposition of Harold Pickartz Page 17 and 18

1 damming the river?

2 A. Yeah, it was, where there was a thing fixed
3 there where you could get across.

4 Q. Right.

5 A. You could get machinery and stuff across there
6 from one side to the other, and they had to keep the
7 water off of what they were doing down there building
8 the dam.

9 Q. Okay.

10 A. Which wasn't very much.

11 Q. So you crossed it so you could kind of see what
12 they were doing down there?

13 A. Yeah, just so I could cross it.

14 Q. All right. Okay. Did you -- after that time
15 did you ever cross again?

16 A. No, ma'am.

17 Q. Okay. All right. Do you know what that street
18 was called back then?

19 A. No. I have heard that it was called Oliver.

20 Q. And is that something you have heard recently
21 kind of in the papers about this lawsuit?

22 A. Well, no. I was -- right there where the bulk
23 plant is, Olivers lived right there, and I was
24 acquainted with the whole family. They were colored
25 people.

Page 18

1 Q. Uh-huh.

2 A. I even worked with one of the boys, but I have
3 just heard then, but I didn't know. I didn't think
4 it was a sign up there, but it was Oliver Street,
5 because it was after that family that lived right
6 there by it.

7 Q. Okay. So you heard it called Oliver in part
8 because there were people named Oliver who lived
9 there?

10 A. Yeah, right here where the bulk plant is. They
11 moved it out and put the bulk plant in there.

12 Q. Okay. But you don't know if it was a
13 recognized, legally recognized city street?

14 A. No, I don't know that it was.

15 Q. Okay.

16 MS. JONES: All right. Well, sir, I
17 think that's all the questions I have for
18 you. Mr. Brockett may have some, and if he
19 does, I am going to let him sit here.

20 THE WITNESS: Yeah, I'm sorry about
21 it.

22 MS. JONES: No, that's fine.

23 THE WITNESS: I have got in two
24 hearing aids, and they have both been
25 broken, too many artillery shells.

Exhibit X-3

Deposition of Andrew Post Page 11

1 A. I know that it's Oliver Street, but there was
2 also another crossing down by Bell Street.

3 Q. Okay.

4 A. That we did talk about. But did I know then
5 what the name of the street was, no. I did not know
6 what the name of the street was.

7 Q. And you know now, you have been told that the
8 city calls it Oliver Street because of this lawsuit;
9 correct?

10 A. I understood that it was always called Oliver
11 Street, irregardless of this lawsuit.

12 Q. But you don't have any personal knowledge of
13 that?

14 A. Well, yes, I read it on maps.

15 Q. Okay. What maps have you read it on?

16 A. City maps. I have seen it on city maps.

17 Q. Okay. Have you done any investigation as to
18 whether or not Oliver Street was a city street?

19 A. No, I did not.

20 Q. Okay. You don't have any knowledge as to
21 whether or not the city had done anything official to
22 make Oliver Street a public street; correct?

23 A. I don't have that information.

24 Q. Okay.

25 MS. JONES: All right. Thank you for

Exhibit X-4

Deposition of Joe Powell Page 12

1 A. Uh-huh.

2 Q. Okay. Is that "yes"? Sorry.

3 A. Yes.

4 Q. In the sixties and seventies when you were
5 utilizing that crossing did you have a name for that
6 road that you used?

7 A. Just Oliver Street is all I ever knew.

8 Q. Okay. And that's what you called it in the
9 sixties and seventies?

10 A. Yes.

11 Q. Okay. You don't have any knowledge, do you,
12 sir, in particular as county judge, of any
13 documentation that shows that Oliver Street was ever
14 dedicated as a city street?

15 A. No, I do not.

16 Q. Okay. Or that any crossing at that location
17 was ever dedicated as a city street?

18 A. I wouldn't know that.

19 Q. Okay.

20 A. I was in charge of rural roads, not city
21 streets.

22 Q. Okay. So you wouldn't have any knowledge about
23 any, any prerequisites for establishing Oliver Street
24 or any street at that location as an actual city
25 street; correct?

Exhibit X-5

Deposition of Paul Stacy Page 11, 12 and 14

Page 11

1 question in a bad way, so I want to reask it just to
2 make sure the answer is clear. You used it when you
3 were a child to go fishing, but not after that; is
4 that right?

5 A. That's right.

6 Q. Okay. Did you, did you call it by any sort of
7 name, the road that went over the crossing when you
8 were a kid?

9 A. No.

10 Q. Okay. Did you ever hear of a street called
11 Oliver Street?

12 A. I have heard of it, yes.

13 Q. Okay. Is it something you've heard of recently
14 when this lawsuit started getting talked about, or
15 had you heard about it since you were a kid?

16 A. Well, I had heard about it when I worked at the
17 gas company, but I never, I was never down there on
18 it. I mean, I never.

19 Q. Okay.

20 A. I knew it was there, but I never knew anything
21 about it.

22 Q. Okay. And did you know where it was located?

23 A. I knew it was down by the depot.

24 Q. Okay.

25 A. I mean, you could see it, and there was a

1 propane tank that sat across the track there. I
2 remember a long time ago a big tank, but that's all I
3 know about it.

4 Q. Okay. And do you have any knowledge as to
5 whether Oliver Street was the legal name of that
6 street, or is it just what you heard it being called?

7 A. I have no idea the name of it.

8 Q. Okay.

9 A. Legal name of it.

10 Q. Okay. And you wouldn't know, for example, if
11 the city had met the legal requirements it needed to
12 in order to have that as an official city street;
13 right?

14 A. Right.

15 Q. Okay. At the gas company did you, did you have
16 any responsibility for any of the utilities or any
17 lines or anything that would have been near that
18 crossing or that street east of the depot?

19 A. I didn't have any responsibility for them, but
20 we had street lines that ran down the River Street.

21 Q. Okay.

22 A. And, but as far as working on that street
23 itself, I don't remember ever being on it.

24 Q. Okay. Do you know if -- does your -- and I
25 preface this by saying I understand you probably

1 BY MR. BROCKETT:

2 Q. At the gas company when you discussed Oliver
3 Street do you remember in what context it was used?

4 A. No, I just know that there was a street there.
5 You know, we had city, we had maps with all of the
6 gas lines and stuff, and I just remember them saying
7 there was an Oliver Street. I remember hearing the
8 name.

9 Q. Okay.

10 A. But, like I said, I never worked down there.
11 Of course, we had three crews, construction crews at
12 that time, so.

13 Q. Okay. So Arkansas Western had some maps?

14 A. Well, they used to. I don't know. They threw
15 them away. I mean, when you got new ones, you threw
16 the old ones in the trash. And they updated, so I
17 don't know if they would have any that old or not. I
18 doubt it. They might.

19 Q. Okay. Do you know who I would contact?

20 A. Probably Dennis Deathridge (phonetic).

21 Q. Dennis would have them?

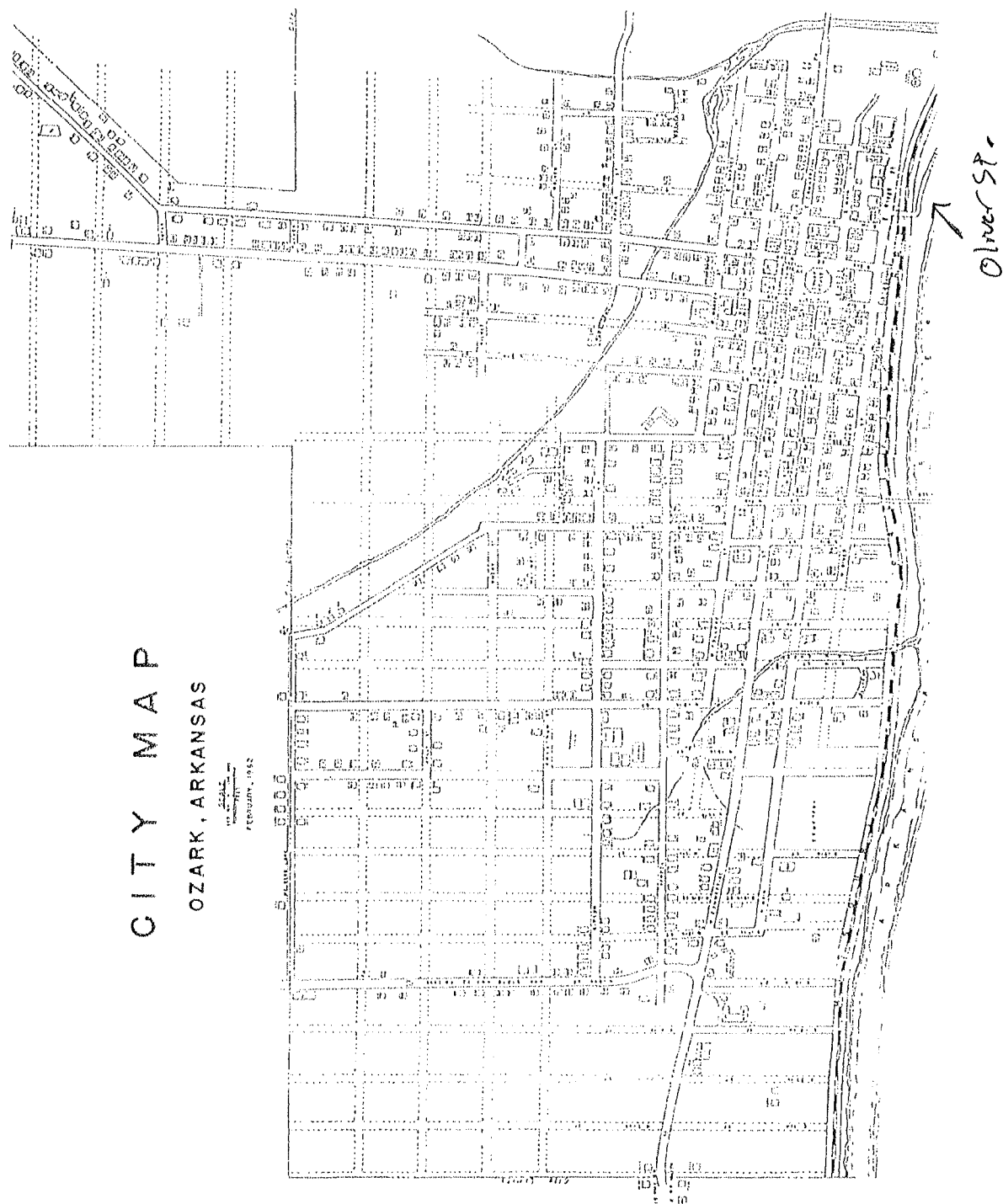
22 A. If they would have anything.

23 Q. Okay. All right. I will speak to him about
24 that.

25 MR. BROCKETT: I don't have any other

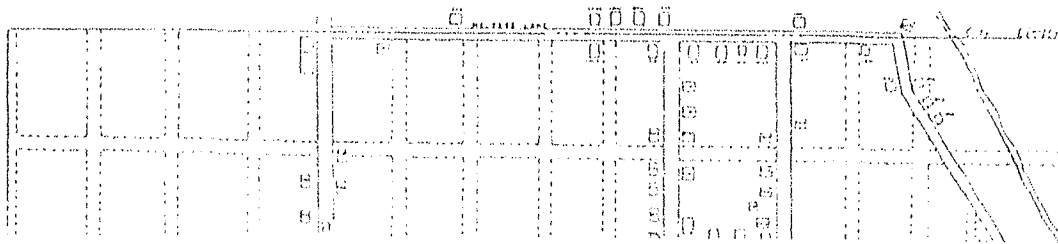
Exhibit Y-1

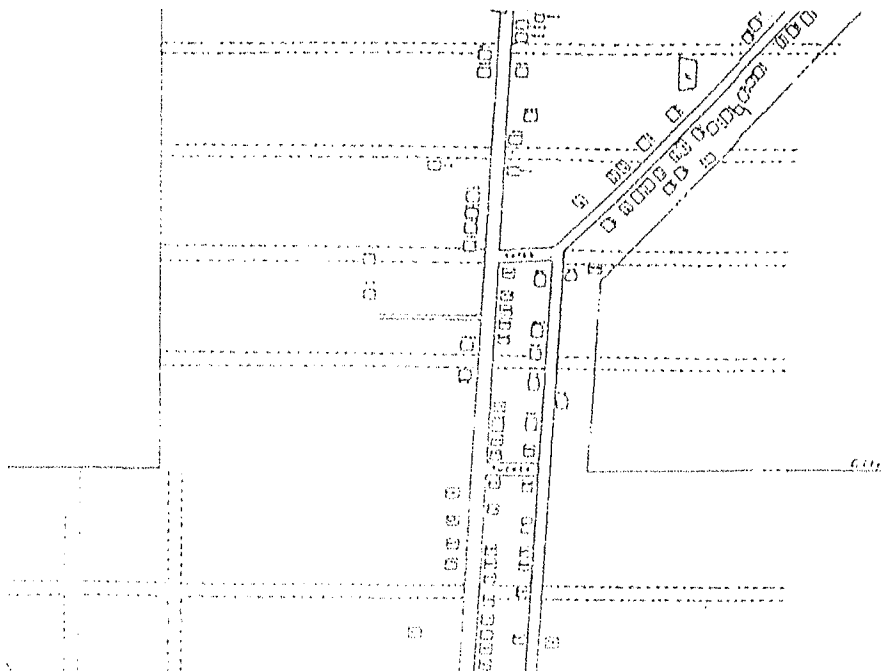
A copy of the February 1962 Map

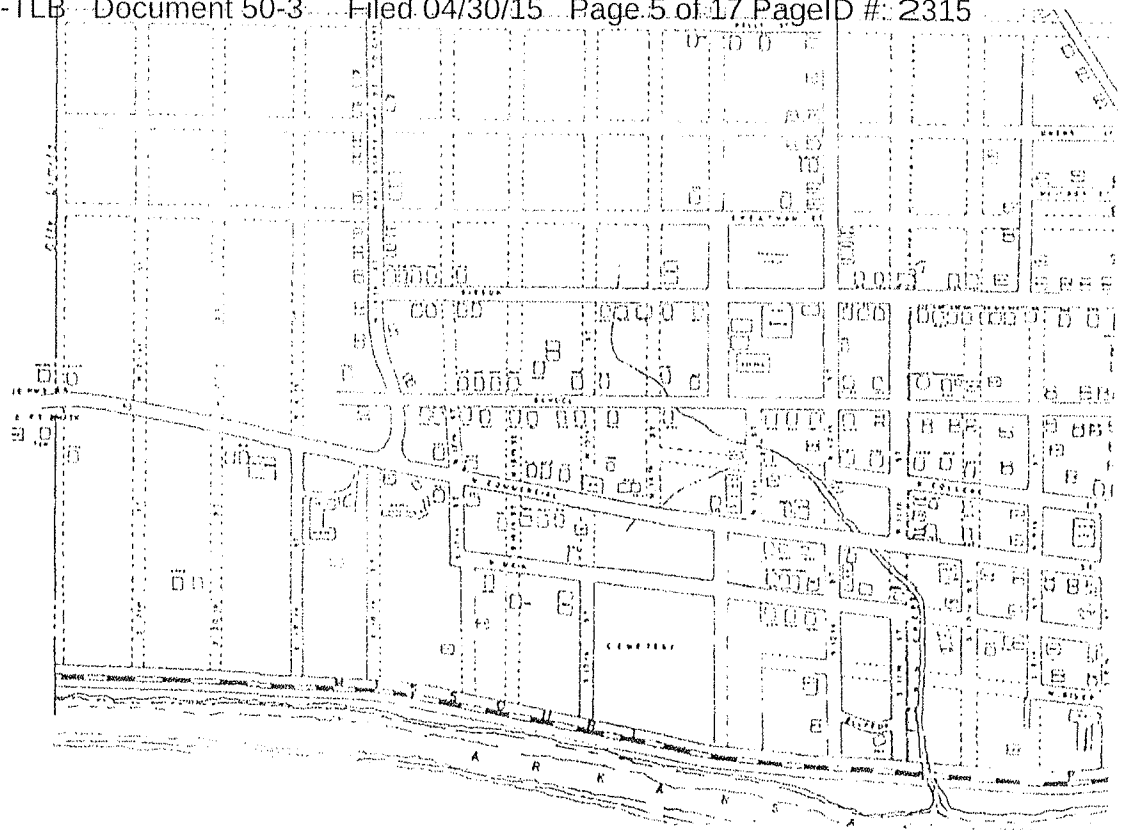


CITY MAP
OZARK, ARKANSAS

SCALE
100 FEET = 1 INCH
FEBRUARY, 1962







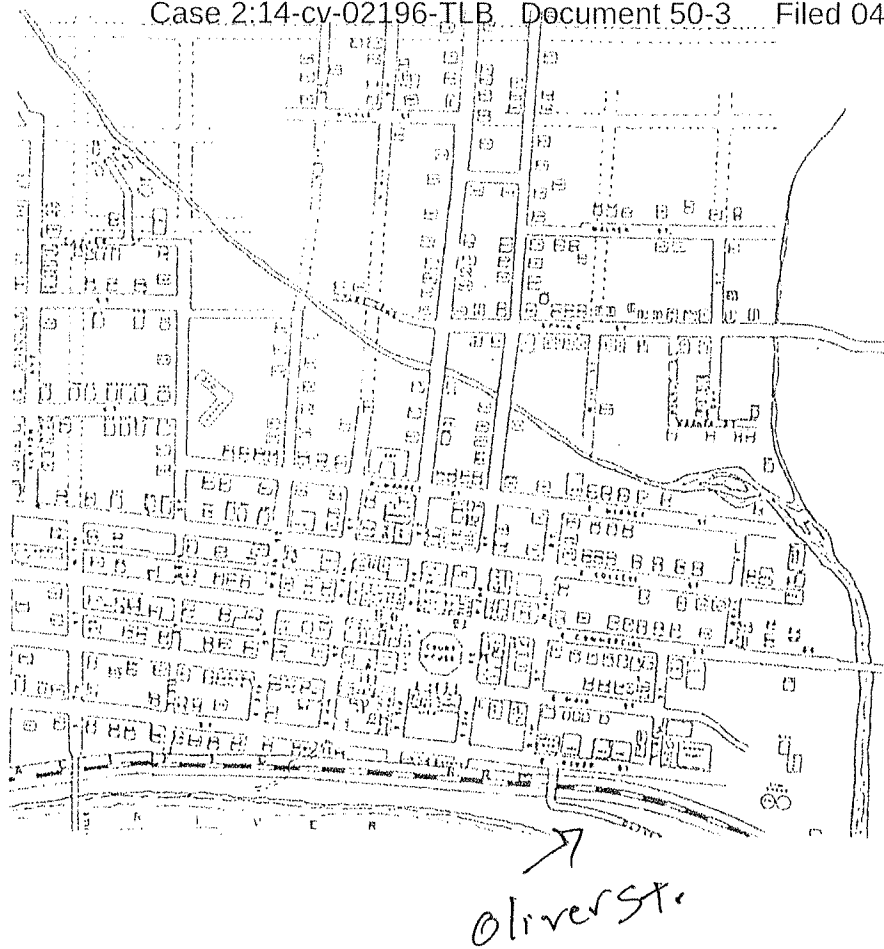
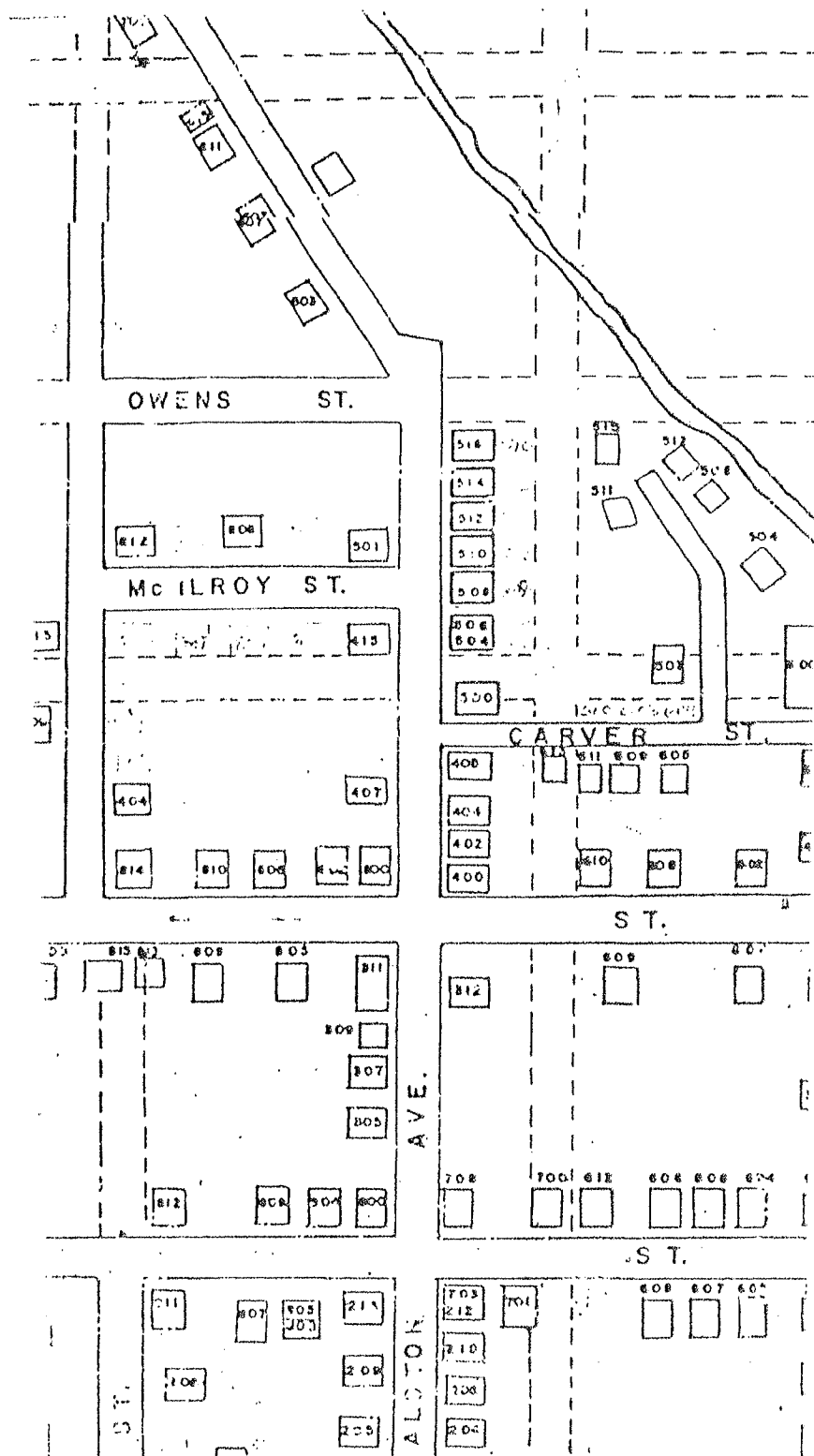
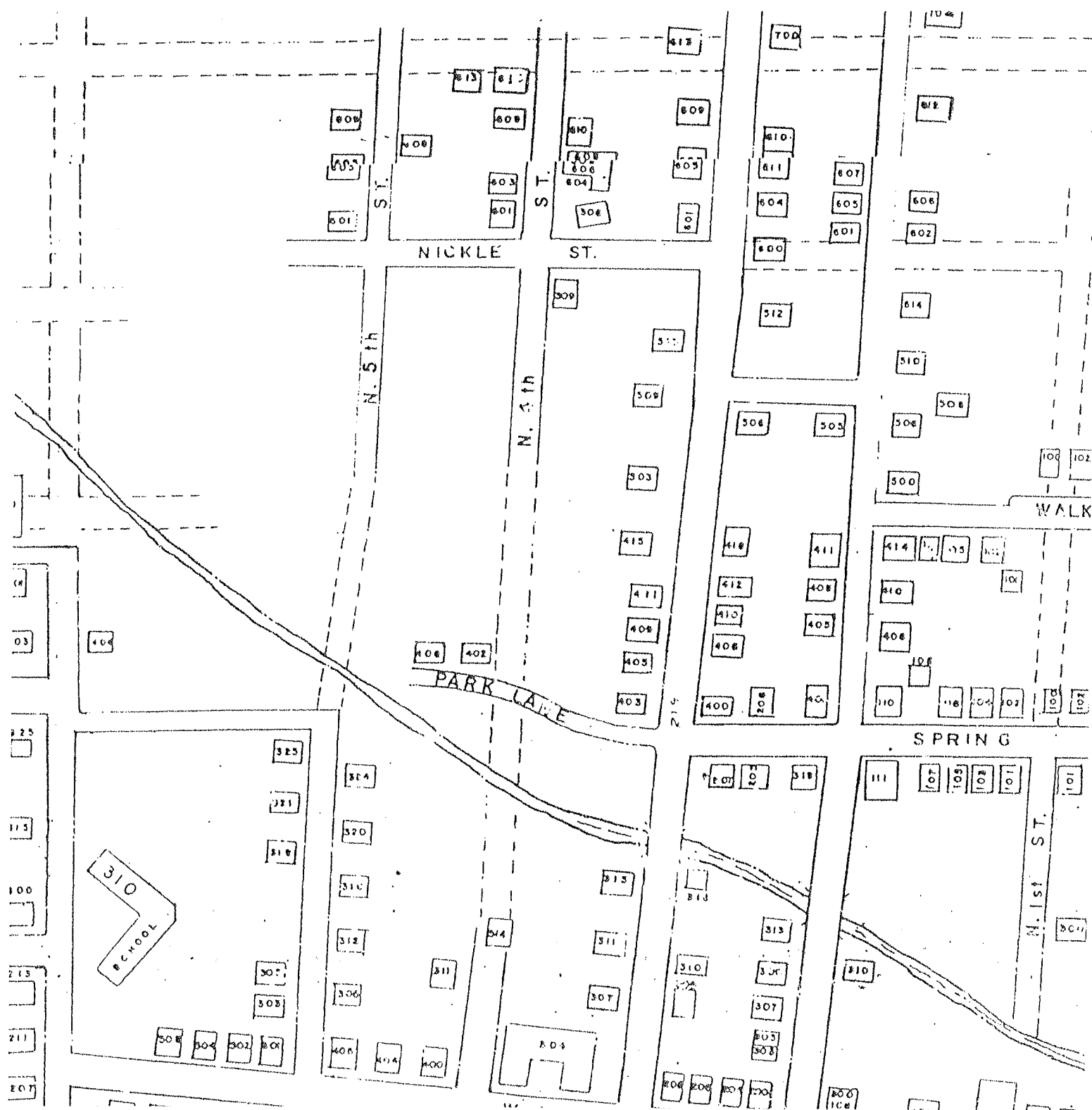
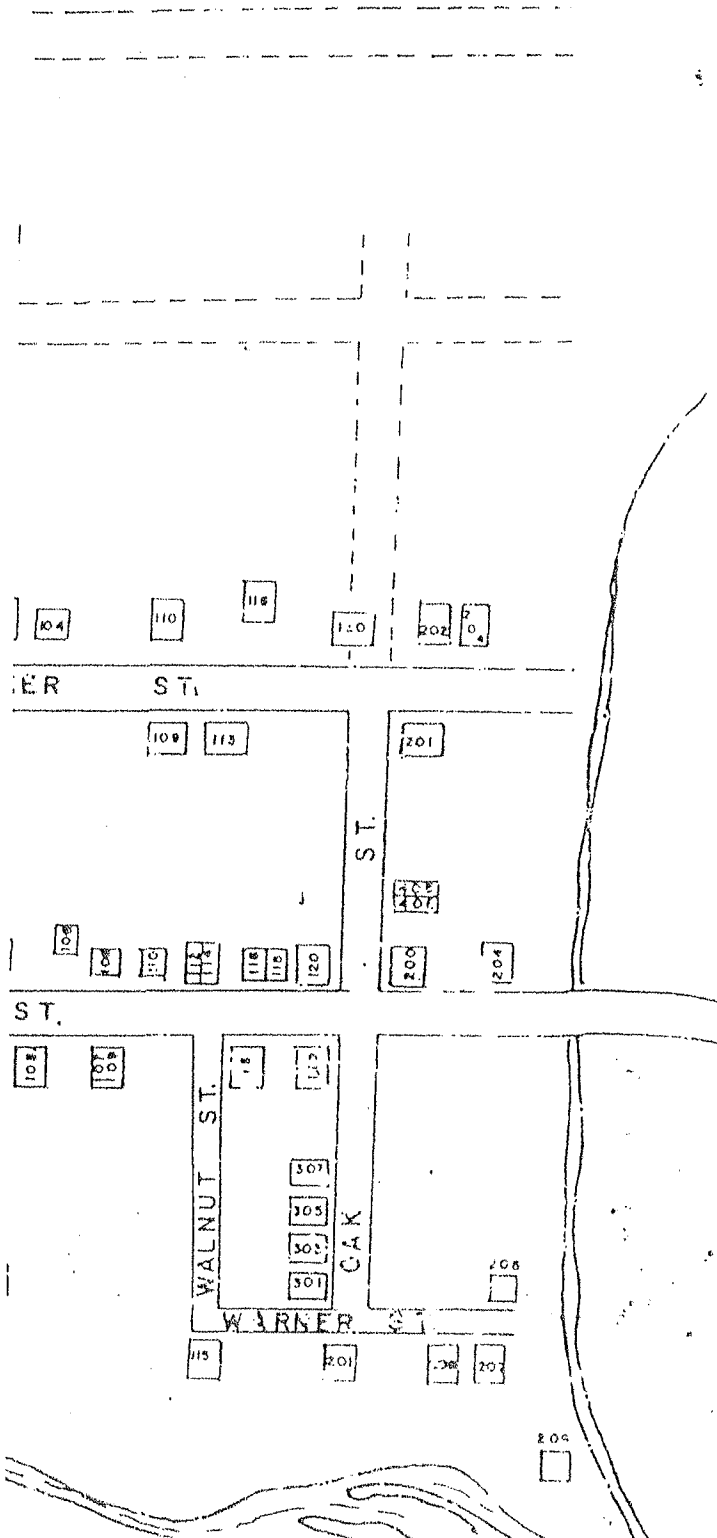


Exhibit Y-2

Enlarged Version of the February 1962 Map







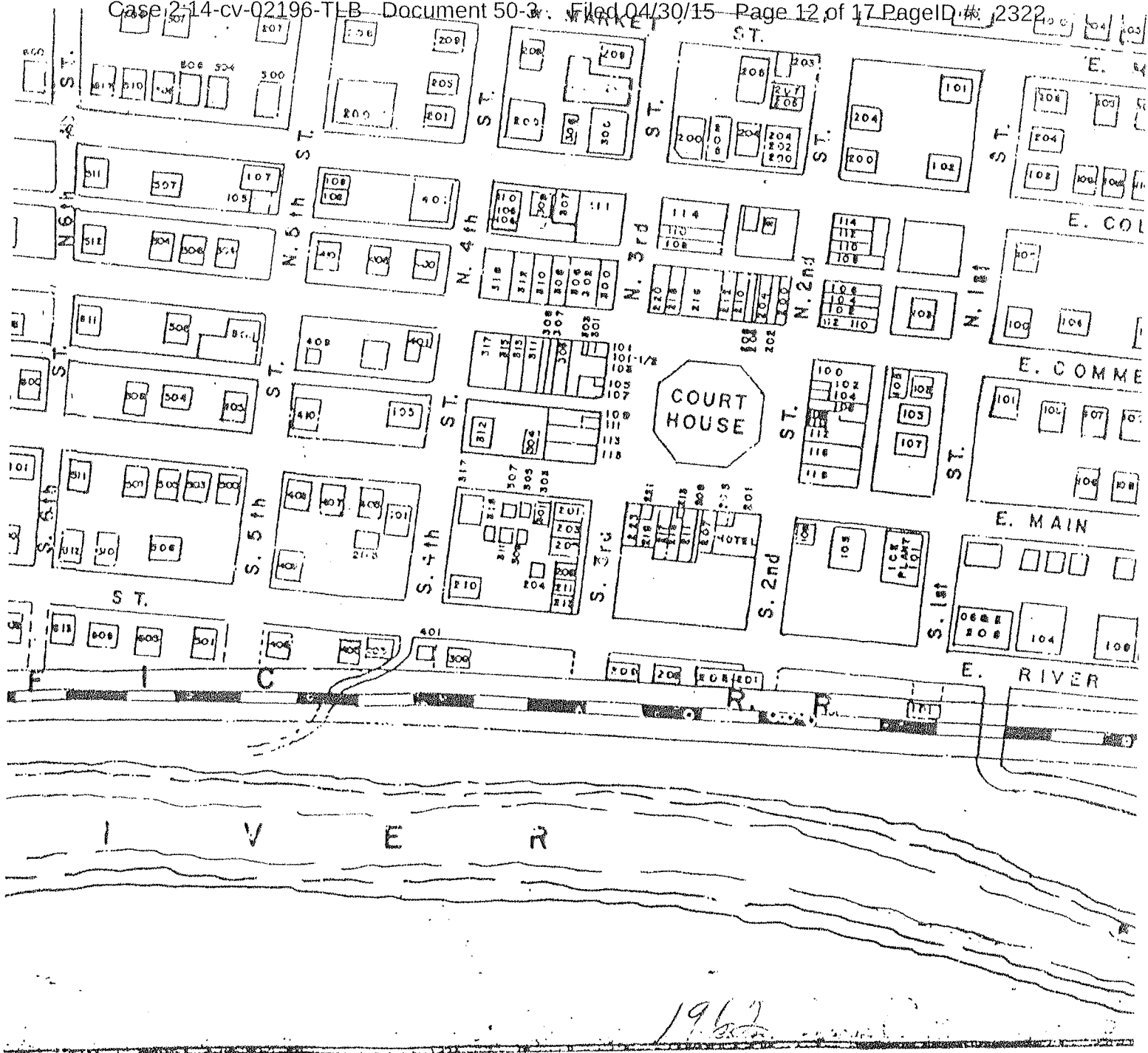


Exhibit Y-3

Deposition of Robert Trotter Page 18, 20 and 25

Page 18

1 A. Could be --

2 Q. Okay.

3 A. -- a possibility.

4 Q. Okay.

5 MS. JONES: All right. Well, sir, I
6 thank you for your time. Mr. Brockett may
7 have some questions for you.

8 EXAMINATION

9 BY MR. BROCKETT:

10 Q. When did you become employed at the post
11 office?

12 A. March 17th, 1962.

13 Q. Okay. I am going to show you what has been
14 marked as Exhibit D to Exhibit 51. This is notated
15 as the City of Ozark house numbers March 1962. Have
16 you ever seen that before? We don't have it all. We
17 just have the first page and one additional page.

18 A. Yeah.

19 Q. That is what you have seen before?

20 A. I have seen some of that, yeah.

21 Q. Okay.

22 A. That was probably the one that --

23 Q. That you were trying to find?

24 A. Yeah.

25 Q. Okay. And this one on the second page of

1 there. I'm not for sure.

2 Q. Okay. But you're aware that Martin Oliver
3 lived down south of the tracks?

4 A. Yes.

5 Q. Okay. I want to show you a different map here.

6 A. Okay.

7 Q. This is Exhibit C of the same Exhibit 51. Have
8 you ever seen a map that details the City of Ozark
9 similar to that?

10 A. This is -- it is similar to one we had at the
11 post office at one time.

12 Q. Okay. About what year did you have one at the
13 post office that was similar?

14 A. That would have been '62, three, somewhere
15 along there.

16 Q. Okay. Do you know who prepared that map in
17 1962?

18 A. No, I don't. No.

19 Q. Okay. Would the Arkansas Western and Planning
20 Development, does that ring a bell to you at all?

21 A. Yeah. I'm familiar with them, yes.

22 Q. Okay. Do you know if they helped prepare a map
23 for the City of Ozark during that time period?

24 A. That, I don't remember.

25 Q. Okay. The next page is a detailed, a more

1 A. Possibly it was.

2 Q. Okay. And do you see on that one it does have
3 Oliver Street on it?

4 A. Yes.

5 Q. Okay. As we sit here today, do you remember if
6 the one that you had at the post office had Oliver
7 Street on it?

8 A. No, I don't.

9 Q. You don't remember?

10 A. No.

11 Q. Okay.

12 A. But it -- if it was this one it was there.

13 Q. Okay.

14 A. But I -- like I say, that's the one I tried to
15 find --

16 Q. Okay.

17 A. -- and couldn't. It's no longer there.

18 Q. I understand.

19 A. But I do know we never delivered mail there.

20 Q. Okay. I understand. And I -- speaking to the
21 owner of F&S Lumber, they had a P.O. Box in Fort
22 Smith. Do you know if Martin Oliver, did he have a
23 P.O. Box?

24 A. Yes.

25 Q. He did?

Exhibit Z

A copy of the Directory dated March 1962

CITY OF OZARK
ARKANSAS

HOUSE NUMBERS

•

MARCH, 1962

CZARK ARKANSAS CITY DIRECTORY

M A R C H 1 9 6 2

Within a reasonable margin of error, these house numbers and the listing of the occupants were correct at the time of the numbering of the houses in March - 1962.

OLIVER STREET

211 F & S Lumber Co.
217 Tom Kuykendall
219 Vacant
221 Alfred Oliver
223 Frank Oliver
224 Berry Collins
225 Martin Oliver, Jr.

NORTH OAK STREET

301 Mrs. H. F. Harmon
303 Harold Steed
305 Thrumen Trotter
307 Asa Hill
406 Lula Mitchell = Blake Mitchell

EAST SIRING STREET

100 Allen Coley
101 Jess Yarbrough
102 L. B. Johnson
105 George Fry
106 Rachel Brison
108 O. D. Dickenson
107 Nora Williamson
109 Mrs. Herbert Turner
109½ David Langston
110 Ernest Nichols
112 Roy Bennett
114 Mrs. Ella Anderson
115 Mary J. Crites
117 T. D. Dickerson
116 Mrs. Lawrence J. Dickerson
118 E. C. Smith. (Apt.)
119 Rose Bevil
120 Joe Sprinkle
200 Jim Kelly
204 John Crites