

Transcript of the Testimony of

Royce Gattis

Date: February 24, 2015

Case: City of Ozark v. Union Pacific Railroad Company

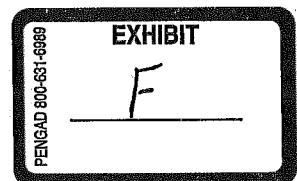
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UNION PACIFIC RAILROAD COMPANY
ARKANSAS STATE HIGHWAY
COMMISSION, as Governing Body of the
ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT, DEFENDANTS

February 24, 2015

BUSHMAN COURT REPORTING
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ANSWERS AND DEPOSITION OF ROYCE GATTIS, a

2 witness produced at the request of the Defendants,
3 was taken in the above-styled and numbered cause on
4 the 24th 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 1:29
8 p.m.

* * * * *

13 It is stipulated and agreed by and between
14 the parties through their respective counsel that the
15 deposition of ROYCE GATTIS may be taken for any and
16 all purposes according to the Federal Rules of Civil
17 Procedure.

* * * * *

501-372-5115

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1 ROYCE GATTIS, 2 the witness hereinbefore named, having first been 3 duly cautioned and sworn or affirmed to tell the 4 truth, the whole truth and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 BY MR. MCKAY: 8 Q. Will you please state your full name for the 9 record, sir? 10 A. Royce Gattis. 11 Q. And what is your current residence, Mr. Gattis? 12 A. 2038 West Highway 64, Ozark, Arkansas 72949. 13 Q. Are you employed? 14 A. I'm unemployable. I'm retired. 15 Q. Good. Well, congratulations. Mr. Gattis, my 16 name is Joe McKay. I represent Union Pacific 17 Railroad in this lawsuit that the City of Ozark has 18 filed against it. Have you ever given a deposition 19 like this before? 20 A. I have years ago. 21 Q. Okay. You probably know what we're doing, 22 then, as far as the question and answer session. 23 This is simply our opportunity to ask questions that 24 might be relevant to this lawsuit. 25 Let me go over a few ground rules that	1 record. 2 You have in front of you a bunch of 3 documents, and I'm assuming that you received what we 4 call the Notice of Deposition, which was the Notice 5 telling you we wanted to take your deposition, as 6 well as there was a Subpoena that asked for certain 7 documents to be brought with you. 8 Let me just label for the record as Exhibit 9 104 the Notice and the Subpoena. 10 (Exhibit No. 104 was marked.) 11 BY MR. MCKAY: 12 Q. You have a copy in front of you of the Notice, 13 so if you could just read along with me. If you'll 14 turn, it looks like, the last two pages. I'll tell 15 you what -- 16 A. Well, you're welcome to -- 17 Q. There it is. 18 A. -- to find what you're looking for. 19 Q. You actually have a few more pages than we 20 have, but what I'm going to refer to in Exhibit 104 21 is what we call Exhibit A, and it's two pages, one 22 and two. And let me ask you, have you had the 23 opportunity to review Exhibit A to the subpoena? 24 A. Say your question again. 25 Q. Yes, sir. Have you had the opportunity to read
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1 will, hopefully, make this as quick as possible and 2 give us a clear record. 3 If I ask a question that you do not 4 understand, will you agree to ask me to rephrase that 5 question? 6 A. Yes. 7 Q. Because if you answer a question, we're going 8 to assume that you understood it, and that's 9 important because we will be relying upon the sworn 10 testimony to prepare the case. Is that fair enough? 11 A. Fair enough. 12 Q. Okay. You are doing a great job so far by 13 answering out loud. Sometimes the witnesses will 14 want to shake their head or nod their head, but if 15 you will make sure you answer out loud so that we can 16 get an actual record, because Ms. Smith can't take 17 down head nods. She just takes down what you say. 18 Do your best to let me finish a question 19 before you answer, and I'll do my best to let you 20 finish your answer before starting a question. 21 If we start talking over each other, 22 Ms. Smith can't take that down, and we'll both get in 23 trouble. So we'll do our best. 24 If I remind you of that, I'm not trying to 25 be rude, just trying to make sure we have a clean	1 and review Exhibit A? 2 A. I did. 3 Q. Okay. And have you had a chance to go through 4 any documents you may have had that are responsive to 5 the items we requested in Exhibit A? 6 A. Yes. 7 Q. And have you brought all documents that are 8 responsive to Exhibit A? 9 A. To my knowledge. 10 Q. Okay. And let's go through, then, and let's 11 just identify the documents that you brought that are 12 responsive to Exhibit A. 13 And I think the easiest thing would be for 14 me to just read the individual items, and then if you 15 could go through and tell me which documents are 16 responsive to each section. Is that agreeable? 17 A. Yes. 18 Q. All right. And you're welcome to read along 19 with me if you would like, but looking on Exhibit A, 20 to Exhibit 104, at the bottom of that page, the first 21 item we asked, we said, Please produce a copy of all 22 documents, correspondence, email, reports that you 23 have sent or received from Union Pacific Railroad 24 Company or any representatives of UP regarding the 25 removal or installation of a crossing in Ozark,

2 (Pages 5 to 8)

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1 Arkansas. 2 It may be that you don't have documents 3 responsive to some of these, and that's fine. That's 4 what we want to know. So are there any documents 5 that you have responsive to number one? 6 A. Yes. 7 Q. Okay. Can you show me what those documents 8 are, so that we can identify them? 9 A. Yes. 10 Q. Okay. 11 A. Do you want me to define what it's referring 12 to? 13 Q. Yes, sir. Let me look at it first, and then I 14 will let you -- okay. Let me ask you, are these 15 copies of the smaller documents? Are these ones we 16 can have to attach as exhibits to the deposition, or 17 are these your original documents? 18 A. Those are the original documents. 19 Q. Okay. 20 A. Well, I copied some of them, of course, from 21 electronic documents. 22 Q. Okay. Is this a copy, the first stack that you 23 handed me, is this a copy we can have to attach to 24 your deposition, or do you need these back? 25 A. (Witness reviews document.) You can have them.	1 Railroad for any reason? 2 A. No. 3 Q. Have you had any conversations with anyone from 4 Union Pacific Railroad concerning any issues? 5 A. The only conversation I've had directly with 6 anyone from the railroad was at the city council 7 meeting that the railroad attended, back whenever it 8 was, 2013 I believe. And I made a presentation there 9 and had some verbal exchange with, with one of the 10 railroad's representatives. 11 Q. Okay. Was that exchange actually during a city 12 council meeting? 13 A. It was. It was public statements. It should 14 be a matter of record. 15 Q. Okay. Do you know who you were talking to from 16 the railroad, the name of the person? 17 A. Mr. Halsted's -- whoever replaced Mr. Halsted, 18 and I do not remember the name right now. 19 Q. Okay. And do you know what position 20 Mr. Halsted was in? 21 A. No, I don't know that. 22 Q. What position the person was in that you were 23 talking to? 24 A. I don't know the exact title, no. 25 Q. Okay. And what was the course of conversation
Page 10	Page 12
1 I have electronic copies of those. 2 Q. Okay. Then I will mark this first stack of 3 documents as Exhibit 105. 4 (Exhibit No. 105 was marked.) 5 BY MR. MCKAY: 6 Q. As I understand it, Exhibit 105 are the 7 documents responsive to item number one on Exhibit A, 8 and can you just explain on the record what the 9 documents are contained in Exhibit 105? 10 A. Yes. This was my request to the, to the 11 engineering map room in Omaha, Nebraska, Union 12 Pacific, for the alignment maps that has reference to 13 the, to the railroad passing through Ozark with, 14 depicting Oliver Street, the public crossing, and any 15 other information that we could glean from that. 16 Q. Okay. So at one point in time you had 17 contacted the railroad to get copies of maps that 18 they may have that relate to this area? 19 A. Yes. 20 Q. Okay. And you have actually obtained maps from 21 the railroad in that regard? 22 A. Yes. 23 Q. Okay. With the exception of the documents that 24 are listed as Exhibit 105, have you had any other 25 written correspondence to or from Union Pacific	1 between you and the railroad representative? 2 A. Well, the direct conversation with him is when 3 he said that the, all of the debris and trash had 4 been cleaned up on the railroad tracks, and I invited 5 him to come down with me, because I had left there 6 only a couple of hours before the meeting, and there 7 hadn't been any cleaning done whatsoever. So he made 8 a false statement in the public meeting, and I was 9 calling him out on that statement. 10 Q. And so what was the false statement, that 11 things had been cleaned up? 12 A. That -- yes, that everything had been cleaned 13 up down there when there was nothing cleaned up. 14 Q. Okay. Were there any other discussions besides 15 whether trash had been cleaned up between you and the 16 railroad representative? 17 A. No. 18 Q. All right. So with the exception of the 19 documents listed in Exhibit 105 and the city council 20 meeting where you had the exchange concerning 21 cleaning trash up on the railroad, you have not had 22 any correspondence or communication with Union 23 Pacific Railroad? 24 A. Not that I can recall. 25 Q. All right. Okay. Let's go on in Exhibit A.

3 (Pages 9 to 12)

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1 Let's move to item number two. And we had asked, we
 2 said, Please produce a copy of all documents,
 3 correspondence, email, reports that you have sent or
 4 received from Union Pacific Railroad Company or any
 5 representative of the UP regarding access to city
 6 property, and I assumed that would be none?
 7 **A. Correspondence, no. Email, no.**
 8 **Q. Okay.**
 9 **A. Now, reports, I consider the maps, you know,**
 10 **where -- I don't know where they fall within this.**
 11 **Q. Okay. That's fair enough. Okay. So other**
 12 **than maps, there would be no other documents**
 13 **responsive to number two?**
 14 **A. True.**
 15 **Q. Okay.**
 16 **A. That's what's -- that's above anything that's**
 17 **already been presented here.**
 18 **Q. Correct. Yes, sir. And let's look at number**
 19 **three, it says, Please produce a copy of all**
 20 **documents, correspondence, email, reports that you**
 21 **have sent or received regarding the removal or**
 22 **installation of a crossing in Ozark, Arkansas. Do**
 23 **you have any documents in that regard?**
 24 **A. To whom?**
 25 **Q. To anyone, sent or received, concerning the**

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1 removal or installation of a crossing in Ozark.
 2 **A. On your question this is to anyone; is that**
 3 **true and correct?**
 4 **Q. Yes, sir.**
 5 **A. Okay. (Witness reviews documents.) Well, I**
 6 **will tell you, I believe that would include just**
 7 **about everything I have in front of me.**
 8 **Q. Okay.**
 9 **A. If you're saying anyone.**
 10 **Q. Okay. Fair enough. Let me limit the question.**
 11 **Do you have any documents sent to or received from**
 12 **Union Pacific concerning removal or installation of a**
 13 **crossing in Ozark?**
 14 **A. No, sir.**
 15 **Q. Okay. Let's go to number four, it says, Please**
 16 **produce any diaries, notes, or calendars you have**
 17 **kept or created regarding any efforts to seek a**
 18 **crossing in Ozark, Arkansas. Do you have anything**
 19 **responsive in that regard?**
 20 **A. Well, you are going to have to clarify the**
 21 **question here on this "seek a crossing." I am**
 22 **seeking to replace a crossing that was illegally**
 23 **removed, and not seeking -- you know, is this meaning**
 24 **the same thing, one and the same?**
 25 **Q. Yes, sir. We are talking about the crossing**

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1 that was removed in Ozark, and the question is do you
 2 have any diaries, notes, or calendars that you have
 3 kept concerning --
 4 **A. Yes.**
 5 **Q. -- that? Okay. Can you show me what that**
 6 **would be?**
 7 **A. Well, pretty much this entire stack. There is**
 8 **one that I wrote some time back pertaining to this.**
 9 **Q. (Counsel reviews document.) Okay. And we'll**
 10 **mark this as Exhibit 106.**
 11 **(Exhibit No. 106 was marked.)**
 12 **BY MR. MCKAY:**
 13 **Q. Okay. What was the purpose of drafting Exhibit**
 14 **106? What prompted that?**
 15 **A. It was to try to just basically establish what**
 16 **had, the impact it would have on this community by**
 17 **losing this, this crossing and sharing it with some**
 18 **other individuals in town.**
 19 **Q. Okay. Were you speaking at an event where you**
 20 **were just mapping out thoughts, or were you just**
 21 **trying to make a record of things you wanted to say?**
 22 **A. I was not speaking at an event, and, yes, it**
 23 **was making a record of things that I felt were**
 24 **important to the loss of the crossing.**
 25 **Q. Okay. Do you know when you drafted this**

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1 document, Exhibit 106?
 2 **A. As I recall, it was in 2013.**
 3 **Q. Okay. All right. Okay. Do you have anything**
 4 **else that would be responsive to number four, which**
 5 **would be a diary, note or calendar concerning**
 6 **crossings in Ozark?**
 7 **A. Well, notes, yes.**
 8 **Q. Okay.**
 9 **A. And it has -- you'll have to tell me what you**
 10 **want.**
 11 **Q. Well, show me what you have as far as notes.**
 12 **A. Okay. This is the -- just basically general**
 13 **information on businesses that were south of the**
 14 **railroad track, and along with a photograph out of**
 15 **The Spectator, an article, and I have some**
 16 **explanation on when it -- that's attached to that**
 17 **information.**
 18 **Q. Okay. Let me read through it, then I'll ask**
 19 **you some questions. (Counsel reviews document.)**
 20 **Okay. Let me mark this as Exhibit 107.**
 21 **(Exhibit No. 107 was marked.)**
 22 **BY MR. MCKAY:**
 23 **Q. And can you just explain to me what Exhibit 107**
 24 **is?**
 25 **A. Yes. There were businesses south of the**

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1 railroad tracks that utilized Oliver Street to, of 2 course, to run their businesses, as well as -- and it 3 just details the F&S Lumber Company, when it was 4 established, when it was closed, when the propane 5 tracks were moved south of the tracks, when they were 6 removed south of the tracks, and then some history in 7 between that between 1949 and 1950 up to the point of 8 Cornerstone removing them in 2001 at the request of 9 Union Pacific Railroad. 10 Also about the city dump, which was leased 11 by -- the land was leased by a Nelsie Oliver and some 12 of the information that I had obtained concerning 13 that, and then the railroad south of the tracks after 14 more research of finding that there was a portion of 15 it, of course, owned by the railroad that when 16 Peachtree and Synergy Energy put the propane tanks 17 down there, the rail spur that was leading to the 18 pallet plant, which was an operating business for 19 approximately ten years down there. 20 Oliver Street actually had a spur down to 21 that, and the -- when the propane tanks were 22 transferred by Synergy Energy out to Highway 23 out 23 near the interstate -- there is indication on here 24 that I have photographs, as a matter of fact, and a 25 map showing the three-quarter inch water line that	1 A. Paris, Arkansas. 2 Q. What year were you born? 3 A. 1941. 4 Q. And just walk me through briefly the different 5 places you have lived and when. 6 A. From Paris to Marshall, Arkansas. 7 Q. Okay. 8 A. From Marshall, Arkansas to Jasper, Arkansas. 9 From Jasper, Arkansas to Ozark, Arkansas in 1946. 10 All of this was during the second World War when my 11 father was serving in the military. 12 Q. Okay. And then how long did you live in Ozark 13 beginning in 1946? 14 A. Until 1959. 15 Q. Okay. And then where did you move in 1959? 16 A. I joined the military and spent four years in 17 the Air Force. 18 Q. Okay. So that would talk us through? 19 A. 1963. 20 Q. 1963? 21 A. Uh-huh. 22 Q. Where did you go after that? 23 A. Back to Ozark where I was still with my 24 permanent residence, of course, and I attended 25 college at Arkansas Tech for the first year and the
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1 ran under the tracks to serve the propane company, 2 the residences on Oliver Street, as well as F&S 3 Lumber Company. 4 A city sewer pipe ran under the tracks, 5 which became an open ditch which dumped into the 6 Arkansas River prior to the 1970s when the water was 7 impounded there, which I also have photographs of 8 that, which you may probably want to, I would think, 9 want a photograph of. 10 Q. Okay. Concerning Exhibit 107, was this 11 something that someone asked you to put together or 12 something that you did on your own? 13 A. I did it on my own. 14 Q. Okay. And let me ask you some specifics. It 15 looks like it's broken down on the first page into 16 three different sections, is that right, as far as 17 three different business entities? 18 A. Yes. 19 Q. Okay. And the first one deals with F&S Lumber 20 Company. And let me back up, are you from Ozark 21 originally? 22 A. Yes. 23 Q. Okay. 24 A. Well I moved here in 1946. 25 Q. Okay. Where were you born?	1 next two and a half, or the next, actually, three 2 years was at the University of Arkansas, so I moved 3 up there in probably '64, late '64 or '65 classes. 4 Q. Okay. And how long did you live in 5 Fayetteville? 6 A. Until 19 -- well, from Fayetteville on up to 7 that would be about '66, '67 to Springdale. 8 Q. Okay. 9 A. And then there until 1968. And I was 10 transferred to the Denver Metropolitan area with 11 Montgomery Ward. 12 Q. Okay. How long were you in Denver at the time? 13 A. Pardon? 14 Q. How long were you in Denver? 15 A. I was there four years and came back -- well, 16 around three years, came back to Ozark in '71, left 17 again in '73 but to go back to Denver. 18 And then I was in -- I had businesses in 19 Ozark from '77 until present, as a matter of fact, 20 but even though I lived in Denver I still had the, 21 Denver area, I still had -- I was back and forth to 22 Ozark frequently because I had businesses here. I 23 moved back permanently -- I'm assuming you are going 24 to ask this; are you? 25 Q. Yes, sir.

5 (Pages 17 to 20)

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1 **A. Permanently in around 1988.**
 2 Q. Okay. And did you move from Denver to Ozark in
 3 1988?
 4 **A. Well, I did -- yeah, I had properties in both,**
 5 **both areas, so I was down here a great deal.**
 6 Q. Okay. But as far as your -- you still had a
 7 residence in Denver up until 1988?
 8 **A. And I also had a residence here.**
 9 Q. Here?
 10 **A. Yeah.**
 11 Q. But did you retire in 1988 from Montgomery
 12 Ward?
 13 **A. Oh no, I left Montgomery Ward in '72.**
 14 Q. Okay. We'll go back through businesses. So
 15 from -- and as I understand, from '77 on you've had
 16 frequent contact with Ozark?
 17 **A. From seventy -- well, I've had frequent contact**
 18 **with Ozark since 1946.**
 19 Q. Okay. But you told me in 1977, beginning in
 20 1977 you owned businesses in Ozark?
 21 **A. Uh-huh.**
 22 Q. And even though you were residing in Denver as
 23 your primary residence you were coming back and forth
 24 frequently?
 25 **A. Yes, yes.**

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1 Q. And then in 1988 you actually moved back to
 2 Ozark full-time?
 3 **A. Latter part of 1988.**
 4 Q. Okay. And have you lived in Ozark since 1988?
 5 **A. Yes.**
 6 Q. Okay.
 7 **A. Not within the city limits of Ozark but in the**
 8 **Ozark area.**
 9 Q. In the general area?
 10 **A. Yeah.**
 11 Q. Yes, sir. Okay. Let's go back, and let me ask
 12 about your employment then. I understand you were in
 13 the Air Force from '59 to '63. Did you graduate from
 14 high school in Ozark?
 15 **A. Yes.**
 16 Q. In 1946?
 17 **A. No. 1959.**
 18 Q. 1959. That makes sense, 1959?
 19 **A. Yes.**
 20 Q. Okay. And then when you got out of the Air
 21 Force were you employed in Ozark?
 22 **A. No. I went straight into college.**
 23 Q. Okay. And did you graduate from University of
 24 Arkansas in Fayetteville?
 25 **A. No. In my senior year I ran out of money and**

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1 **had to go to work.**
 2 Q. Okay. So that was in 1968?
 3 **A. No. It would have been 19, probably '65, '66.**
 4 Q. When you went to work?
 5 **A. I was working during college.**
 6 Q. Okay. Where did you work during college?
 7 **A. Montgomery Ward.**
 8 Q. Okay. But then in about 1965 you went to work
 9 full-time?
 10 **A. That's true. I had the same job offer as an**
 11 **operating manager. I was on the management training**
 12 **program.**
 13 **I had the same job offer when I had to drop**
 14 **out of college because of lack of funds, and so then**
 15 **I went ahead and made the decision to do that at the**
 16 **point in time, and then I never did -- I always**
 17 **planned to go back and finish, but I never did go**
 18 **back and finish.**
 19 Q. Okay. How long did you work for Montgomery
 20 Ward?
 21 **A. Seven years.**
 22 Q. So that would take us from '65 to about '72?
 23 **A. That's right.**
 24 Q. All right. So when you were in Springdale and
 25 Denver the first time you were working with

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1 Montgomery Ward?
 2 **A. True.**
 3 Q. And then what did you do in '72 as far as
 4 employment after Montgomery Ward?
 5 **A. I went into real estate. Real estate business.**
 6 Q. Okay. Did you have your own company?
 7 **A. Yes.**
 8 Q. What was the name of that company?
 9 **A. RE/MAX. RE/MAX West, Incorporated.**
 10 Q. Did you work in the real estate business before
 11 you had your own company?
 12 **A. Yes.**
 13 Q. Who did you work for?
 14 **A. O'Kelly Realty here in Ozark for a short period**
 15 **of time, and that would have been in the '71-'72**
 16 **period.**
 17 Q. Okay. Okay. And then, so beginning in '79 was
 18 RE/MAX your primary business? That was a bad
 19 question. Did you own any other businesses besides
 20 the RE/MAX West in the late seventies, early
 21 eighties?
 22 **A. Yes.**
 23 Q. Okay. What other businesses did you own?
 24 **A. I had an insurance agency.**
 25 Q. Okay. What was the name of it?

6 (Pages 21 to 24)

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1 **A. RE/MAX.**
 2 Q. Okay.
 3 **A. We were, I guess you would call it an**
 4 **independent contractor. We wrote for several**
 5 **different companies.**
 6 Q. Okay. I may have written this date down wrong.
 7 Did you say you started the RE/MAX company in '72 or
 8 '79?
 9 **A. No, no. It would have been in the -- it would**
 10 **have been probably -- I went with RE/MAX in probably**
 11 **'73 or '74.**
 12 Q. Okay.
 13 **A. And then about '75 is when RE/MAX West came**
 14 **into existence.**
 15 Q. Okay. I had written down, and I may have
 16 written this down incorrectly, but I had in 1973 you
 17 moved back to Denver a second time; is that?
 18 **A. It's '72 or '73, uh-huh, somewhere in that**
 19 **timeframe. I was coming back and forth then.**
 20 Q. Okay. And were you still with Montgomery Ward
 21 at that time?
 22 **A. No. I left Montgomery Ward before I came back**
 23 **to Ozark.**
 24 Q. Okay.
 25 **A. And so it would have been '71 or early '72. I**

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1 **left Montgomery Ward, came back to Ozark, spent a**
 2 **year or so here, and I was licensed in the State of**
 3 **Arkansas.**
 4 Q. With a real estate license?
 5 **A. With a real estate license, and then went back**
 6 **to Colorado.**
 7 Q. Okay. And what did you do in Denver when you
 8 went back the second time?
 9 **A. Real estate.**
 10 Q. Okay. Who did you work for up there?
 11 **A. Initially with Crown Realty.**
 12 Q. Okay.
 13 **A. And then RE/MAX, and then I had my own RE/MAX**
 14 **franchise.**
 15 Q. Okay. Were you in the real estate business up
 16 until -- well, are you still in the real estate
 17 business?
 18 **A. No.**
 19 Q. Okay. How long did you have the real estate
 20 company here in Ozark?
 21 **A. Repeat.**
 22 Q. How long did you have a real estate company in
 23 Ozark?
 24 **A. I did not have a real estate company in Ozark.**
 25 **I worked with O'Kelly --**

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1 Q. Okay.
 2 **A. -- as an agent.**
 3 Q. The RE/MAX was in Denver?
 4 **A. RE/MAX was in Denver.**
 5 Q. Got it. Okay. And how long were you with
 6 O'Kelly? That was just the year or two?
 7 **A. Approximately a year.**
 8 Q. Okay. And were you with -- were you in the
 9 real estate business in Denver up until 1988?
 10 **A. No. I sold the company in '85.**
 11 Q. Okay. And then did you have any other
 12 companies in Denver?
 13 **A. I still had the insurance agency.**
 14 Q. Okay.
 15 **A. I had a company called Maxamillion Enterprises,**
 16 **LLC.**
 17 Q. What did that do?
 18 **A. We created real estate software for real estate**
 19 **companies, billing, maintaining inventories, et**
 20 **cetera.**
 21 Q. Okay.
 22 **A. And I sold it in, I believe, '88 to an outfit**
 23 **called Pine Tree out of Vancouver. Actually they**
 24 **were across -- they were in Canada. I can't think of**
 25 **the name of the town right now.**

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1 Q. That's okay. Is that company still in
 2 business?
 3 **A. Not to my knowledge.**
 4 Q. Okay. All right. And then any other business
 5 interest that you had from the late seventies up
 6 until 1988, whether they were in Denver or here in
 7 Ozark?
 8 **A. I owned the, a Roadrunner convenience store**
 9 **here in Ozark.**
 10 Q. And where was that located?
 11 **A. The Highway 23, Highway 64 intersection at the**
 12 **southeast corner, it will be the northeast corner of**
 13 **that intersection.**
 14 Q. Okay. And do you still own that?
 15 **A. No, I have sold it since then.**
 16 Q. Okay. Any other business interest in the late
 17 seventies up through 1988?
 18 **A. I built the Ozark Maytag Laundry in 1987-'88.**
 19 Q. Now, is that a retail store, or was that a --
 20 **A. It was a retail laundry.**
 21 Q. Okay.
 22 **A. A self-service laundry.**
 23 Q. Okay. Do you still own that?
 24 **A. No.**
 25 Q. Okay. When you say you built that, did you

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1 actually build the building, or you meant you built 2 the business, or both? 3 A. I built both, all of the above. 4 Q. Okay. Any other businesses before 1988 that 5 you owned? 6 A. No, no, not businesses. 7 Q. Okay. Let's talk about from 1988 forward. 8 Have you owned any businesses since 1988? 9 A. The convenience store. 10 Q. Okay. 11 A. I leased it to Total Petroleum, and I owned the 12 laundry up until -- I would have to look at the 13 records on that, in the early nineties somewhere. 14 Q. Okay. 15 A. And that's it, pretty much. 16 Q. Okay. 17 A. Yeah. 18 Q. All right. And the reason I was asking those 19 questions, you obviously have some personal knowledge 20 of this crossing, what was on the south side of the 21 tracks, north side of the tracks, et cetera, so we 22 will get into that -- 23 A. Okay. 24 Q. -- at some point. But back to Exhibit 107, 25 when you drafted this document that talks about the	1 information you obtained from someone? 2 A. Well some of this existence is personal 3 knowledge, and the other is, is from Mr., is from 4 Mr. Allred -- 5 Q. Okay. 6 A. -- who operated the business for those number 7 of years. 8 Q. And that that's Harrison Allred listed at the 9 bottom? 10 A. It is. 11 Q. Okay. Does he still live in the Ozark area? 12 A. He does. 13 Q. All right. Do you have a phone number or 14 address for him with you? 15 A. Not with me. 16 Q. Okay. Let me just let you look at what is -- 17 A. I say that. I may have it. Well, not with me. 18 Q. As it relates to Peach Valley Gas, can you 19 identify which of the bullet comments are based on 20 from your own personal knowledge as opposed to those, 21 that information you obtained from Mr. Allred? 22 A. That the propane tanks existed and where they 23 existed. 24 Q. Okay. 25 A. That a rail spur existed, that the storage tank
Page 30	Page 32
1 first section, F&S Lumber Company, and you talk about 2 what the business was, when it was established, when 3 it closed, people it employed as far as numbers, the 4 size of land leased, is this information that's 5 contained in Exhibit 107 as it relates to F&S Lumber 6 Company, is that information you have personal 7 knowledge of, or is that information you obtained 8 from someone? 9 A. I obtained it from someone, the individual who 10 operated the business. 11 Q. Okay. And is that Kenneth Smith? 12 A. It is. 13 Q. Okay. Does he live in Ozark? 14 A. He does. 15 Q. Okay. Do you know his address? 16 A. I do not. 17 Q. Okay. Do you have a phone number for him? 18 A. Not with me. 19 Q. Okay. But he still lives in the area? 20 A. Yes. 21 Q. And then in the middle section of the first 22 page of 107 talks about Peach Valley Gas Company, and 23 I'll ask the same question, for the information 24 listed in this exhibit, is that information based 25 upon your own personal knowledge or based upon	1 moved to Highway 23 in 2001, because I sold them the 2 land. 3 Q. Okay. Okay. Can we just put a check mark on 4 those three facts so that I can know which ones are 5 based on your own personal knowledge? 6 A. (Witness complies.) 7 Q. Okay. Then let me ask you to do the same thing 8 on the last entity there, the Ozark City dump. Which 9 of those facts is based on your own personal 10 knowledge versus knowledge you obtained from someone 11 else? 12 A. Okay. That the dump existed is my personal 13 knowledge. 14 Q. Understood. 15 A. That it was leased to this individual at that 16 point in time. It was my personal knowledge that 17 that's -- but this is -- that it existed is... 18 Q. Okay. So you knew it existed. You didn't 19 necessarily know based on your own personal knowledge 20 who it was leased from? 21 A. Exactly. 22 Q. Okay. And who did you obtain that information 23 from as to the dump being leased from Ms. Oliver? 24 A. City records. 25 Q. Okay. Which city records; do you know?

8 (Pages 29 to 32)

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1 **A. It's in an ordinance.**
 2 Q. Okay.
 3 **A. That says the city leased the land from Nelsie**
 4 **Oliver.**
 5 Q. Okay.
 6 **A. And the amount that it was leased for.**
 7 Q. Okay. And then the second page of that
 8 document appears to be notes that you took based on a
 9 conversation with Mr. Allred?
 10 **A. Yes.**
 11 Q. Okay. Do you know when that, when that
 12 conversation took place, roughly?
 13 **A. Roughly, the middle of year June, July 2013.**
 14 Q. Okay. Of the facts listed on the second page
 15 of this exhibit, are any of these facts facts that
 16 you already had personal knowledge of?
 17 **A. I would have to answer that somewhat.**
 18 Q. Okay. And describe what you mean?
 19 **A. Now I wish I hadn't have said "somewhat."**
 20 Q. You can change your answer if you want to.
 21 **A. The -- I know that some of this existed. I**
 22 **don't -- this, this only helped refresh my memory or**
 23 **expand my knowledge of what was down there.**
 24 Q. Okay, okay. Let me see if we can put it this
 25 way, it's safe to say you personally remember the

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1 propane tanks being south of the tracks?
 2 **A. Absolutely.**
 3 Q. You remember the company was in business. As
 4 far as the specifics of the facts and dates, that's
 5 probably information that you obtained from
 6 Mr. Allred?
 7 **A. Yes.**
 8 Q. Okay. As to the F&S Lumber Company, do you
 9 know or did it come up in your discussions with
 10 Mr. Smith how far away from the tracks the F&S Lumber
 11 Company was located?
 12 **A. No.**
 13 Q. Okay. It says -- one of the facts says, Size
 14 of leased land was 10 to 15 acres. Do you know --
 15 I'm assuming F&S Lumber Company leased the land from
 16 someone; correct?
 17 **A. That's what I'm told.**
 18 Q. Do you know who they leased the land from?
 19 **A. That, I do not.**
 20 Q. Okay. Of course, the next bullet comment
 21 states that, so I should have read on. But it's your
 22 understanding based on your conversation with
 23 Mr. Smith that there was a rail spur that went
 24 actually to F&S Lumber Company?
 25 **A. Yes, I have, I have aerial photographs showing**

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1 **that.**
 2 Q. Okay. Do you have those with you?
 3 **A. I do.**
 4 Q. Okay. Why don't we go ahead and look at those
 5 aerial photographs?
 6 **A. Would it be appropriate for me to give you a**
 7 **little history of my knowledge about what brings it**
 8 **up to where we, I mean where some of this is, my**
 9 **early knowledge of that area down there.**
 10 Q. It probably would. That would probably help.
 11 If you want to do that just in a narrative type of
 12 format.
 13 Now, if you have documents that kind of
 14 relate to these things, maybe we could stop and look
 15 at those as we go through it.
 16 **A. Yeah.**
 17 Q. But that would probably be good to do. I tell
 18 you what, before we do that, let me just finish the
 19 list just to see if there is anything else responsive
 20 to specific things on here, because I think there are
 21 only two left.
 22 **A. Okay. Are we going to jump to that or go ahead**
 23 **and do what we're looking for here?**
 24 Q. Let me finish these two items right here --
 25 **A. Okay.**

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1 Q. -- and then, and then I'll let you bring me up
 2 to date with the general historical knowledge. I
 3 think we've already answered this, but you don't have
 4 any other -- well, no, we have not. Do you have any
 5 notes or diaries relating to conversations you had
 6 with Union Pacific employees?
 7 **A. No.**
 8 Q. Okay. Do you have any notes or diaries or
 9 calendars from any city council meeting concerning
 10 the crossing in Ozark?
 11 **A. Not that I recall.**
 12 Q. Okay. All right. Now, let's go and let you
 13 kind of walk me through.
 14 **A. Well, let's go back to the question you asked**
 15 **earlier --**
 16 Q. Okay.
 17 **A. -- about the, where we had the aerial**
 18 **photograph.**
 19 Q. Yes, sir.
 20 **A. Here is a copy of the aerial photograph. This**
 21 **is F&S Lumber Company right here.**
 22 Q. Okay.
 23 **A. This is Oliver Street. This road leads down to**
 24 **the dump, and I have a better -- that's the city**
 25 **dump. I have a better -- this is a copy of this.**

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1 Q. Okay. 2 A. You can see smoke rising on this. This was a 3 berm that ran all of the way down the back of this. 4 And you can't see the city dump from this, but there 5 was a large land mass that ran all along the river 6 down to where Gar Creek comes in here. 7 And some of this little narrative history 8 will, this will back up what I'm saying. The -- 9 here's the -- you can see the railroad spur. There 10 is a railroad car right there; isn't it? I even 11 brought you a magnifying glass so you can see it 12 better. 13 Q. I was wondering what this was for. I thought 14 maybe it was a mirror; you are going to make me hold 15 it up and make me look at myself. 16 A. At one time I discovered that the further you 17 bring it back from the photograph the better you can 18 see the particular area. 19 Q. Okay. I see. But you have got to find the 20 right spot. Okay. Where did this photograph come 21 from? Where did you obtain it? 22 A. You know, I don't recall. I've had it for such 23 a long period of time. We have -- I'm kind of a 24 collector of memorabilia of Ozark history, so it came 25 to pass at some point in time.	1 A. All of this is underwater now. 2 Q. Okay. 3 A. This is Highway 64. This is Bell Street. The 4 depot sits right over here. 5 Q. Okay. The -- on Exhibit 108 you talk about it 6 says also the road -- also shows the road leading to 7 the city dump located behind them? 8 A. Uh-huh. 9 Q. You can't see the city dump there on the 10 photograph? 11 A. No. The berm, see, there's a berm built here. 12 Q. Okay. 13 A. And right here is the road that leads down to 14 it. Do you see that road right there? 15 Q. Yes. 16 A. That curves in behind it, and you can see smoke 17 coming up, and, as I said, there is a large land mass 18 behind this berm. 19 Q. Was the city dump on the south side of that 20 berm? 21 A. Yes. 22 Q. Do you know? 23 A. Yes. 24 Q. Okay. 25 A. It was hidden from, you know, general view if
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1 Q. Okay. What I will do is let's just attach the 2 copy as Exhibit 108, so -- 3 A. Now this -- this is in 1952, I believe, that -- 4 this is the REA annual meeting that's going on with 5 all of this on the baseball, the old baseball field 6 down here. This was a canning factory. 7 Q. What's -- 8 A. That's the rodeo ground. 9 Q. What is REA; is that a company? 10 A. Rural Electric Association. 11 Q. Okay. 12 A. That's back when you can see how many people 13 are pretty interested in it. Now when they have an 14 annual meeting they are lucky to get their board of 15 directors to show up. 16 Q. Okay. We will mark the photograph, at least a 17 copy of the photograph that we are talking about as 18 Exhibit 108, just so it will be clear on the record 19 what we're talking about. 20 (Exhibit No. 108 was marked.) 21 BY MR. MCKAY: 22 Q. Okay. 23 A. This is a railroad line also that goes out to 24 Philpot (phonetic) mines, that no longer exists. 25 Q. Okay.	1 you were on the north side of it, but they -- you 2 know, back at that point in time they just pushed the 3 trash off into the river whenever it would start 4 being -- with bulldozers. 5 Q. Okay. And then the residences that you are 6 referring to, can you show me those? 7 A. These right here. (Witness indicates.) 8 Q. Okay. 9 A. I believe there was -- I believe there was five 10 down there, and I could stand to be corrected on 11 that, but... 12 Q. Okay. Now the railroad spur that you're 13 talking about, is that information just based on 14 looking at the photograph, or do you have any other 15 information related to the spur? 16 A. Well, both Mr. Allred and both Mr. Smith, they 17 delivered propane to the propane company there. It 18 delivered and brought, delivered raw materials and 19 brought out finished materials from the F&S Lumber 20 Company from the spur. 21 Q. Okay. It's your understanding that was the 22 same spur, the one, the spur that serviced F&S is the 23 same? 24 A. Same spur that serviced the propane. 25 Q. The propane, okay.

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1 **A. Yeah. You can see it in this photograph**
 2 **wherever we did, we had the photograph where it had**
 3 **the news.**
 4 **Q. Is that -- I don't know where that is.**
 5 **A. The one that has the news.**
 6 **Q. Here it is.**
 7 **A. There it is. These are the -- these are --**
 8 **well, you can't see it. The spur was over here.**
 9 **Q. Okay.**
 10 **A. So, but it served -- maybe you can see it on**
 11 **here. No, you can't see it on there.**
 12 **Q. Okay. Do you know why the gas company moved**
 13 **the tanks from the south side of the tracks to the**
 14 **location where you actually leased land to them?**
 15 **A. I only know what I was told.**
 16 **Q. Okay. What were you told?**
 17 **A. That the railroad, Union Pacific Railroad told**
 18 **them to move it, would not renew a lease with them.**
 19 **Q. Okay. Okay. Do you know if Cornerstone Energy**
 20 **is still in operation?**
 21 **A. Is that the last one on it?**
 22 **Q. Yes, sir.**
 23 **A. Yes, to my knowledge, they are. They were as a**
 24 **matter of just a few years ago.**
 25 **Q. Okay. Do you they still have propane tanks in**

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1 **this area?**
 2 **A. Not to my knowledge.**
 3 **Q. Okay. But you said the storage tanks were**
 4 **moved to Highway 23 North in 2001, did you say that**
 5 **was land that you leased to Cornerstone Energy?**
 6 **A. No. I sold it to them.**
 7 **Q. Sold it, okay. And who told you that Union**
 8 **Pacific did not renew the lease with Cornerstone, is**
 9 **that Mr. Allred?**
 10 **A. Yes.**
 11 **Q. Okay. Go ahead.**
 12 **A. All right. Let me do my little history thing**
 13 **here.**
 14 **Q. Okay.**
 15 **A. From about ten years old on up until I left**
 16 **here in 1959 I frequent that area with, went down**
 17 **there with some frequency.**
 18 **As a ten-year-old I used to sit on the**
 19 **bridge, the railroad bridge down there and shoot at**
 20 **gar and turtles and snakes with my BB gun.**
 21 **Q. Is that the bridge -- which bridge is that**
 22 **you're talking about?**
 23 **A. The bridge that crosses Gar Creek, the railroad**
 24 **bridge that crosses Gar Creek, which is a different**
 25 **bridge now than it was then.**

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1 **The old bridge actually had a boardwalk on**
 2 **it that you could walk back and forth across without**
 3 **being on the tracks itself. It was off to the side.**
 4 **Q. Okay.**
 5 **A. From about ten years old up until I was, had a**
 6 **.22 rifle, then I took a .22 rifle down there and**
 7 **shot at the same thing.**
 8 **I hunted all up and down those tracks. And**
 9 **if you're going to ask have I ever trespassed on the**
 10 **tracks, yes, I have trespassed on the tracks.**
 11 **Q. Okay.**
 12 **A. From an early age. Adults went down there,**
 13 **people would go down just when there would be high**
 14 **water, just to see. There would be huge gar.**
 15 **When they talk about alligator gar, I don't**
 16 **think I'm exaggerating. You will see things that are**
 17 **nearly as long as this table.**
 18 **I hunted rabbits up and down the railroad**
 19 **track with a shotgun. I've hunted deer east and west**
 20 **of here off the railroad track. So, you know, the**
 21 **kids that grew up here have a lot of familiarity with**
 22 **that area.**
 23 **We used to go down to the city dump. There**
 24 **wasn't Netflix and iPhones and -- we didn't have a**
 25 **TV, you know, so that was our entertainment. We'd**

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1 **shoot at rats at the city dump.**
 2 **People would go down into this area south**
 3 **of the tracks after the dump was finally closed and**
 4 **people said, I heard someone say that that road**
 5 **wasn't down there. My goodness, there used to be**
 6 **kind of a lovers lane down there. People would go**
 7 **down and park, because no one bothered you there, you**
 8 **know --**
 9 **Q. Okay.**
 10 **A. -- so...**
 11 **Q. When is your first recollection of a road being**
 12 **located at what's referred to as the Oliver Street**
 13 **crossing?**
 14 **A. When I was about ten years old.**
 15 **Q. Okay. All right. And did you all -- you**
 16 **mentioned you trespassed on the tracks. Did you**
 17 **cross the tracks at all locations up and down that**
 18 **area?**
 19 **A. Absolutely.**
 20 **Q. Okay.**
 21 **A. Absolutely.**
 22 **Q. All right.**
 23 **A. No one, no one ever said a word about it.**
 24 **Q. Okay.**
 25 **A. Of course at that period of time I carried a**

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1 .22 rifle through, you know, downtown Ozark, along
 2 with other kids that no one ever said a word about
 3 either, and now you would have, what, the Swat team
 4 out on you, so.
 5 Q. Okay. All right. Anything else that you
 6 remember as far as the history?
 7 A. Well, I have some more photographs.
 8 Q. Okay. That's great.
 9 A. If you look in the very, very back, of course
 10 that is the old grade school here in town, but here's
 11 the -- there used to be -- well this is even too
 12 early for it here, but there was, there was a feed
 13 mill.
 14 There is the feed mill right there, and
 15 there were storage tanks, and I think you can see
 16 them on this one, back down into the, into the
 17 foreground or background rather.
 18 Q. You'll have to point me to that. I can't
 19 distinguish which one.
 20 A. There is another excellent picture hanging at
 21 City Hall, incidentally, an area like this. Right,
 22 right there see them sticking up right there.
 23 Q. Yes, sir.
 24 A. And then that is F&S Lumber Company, that
 25 building back across the tracks there.

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1 Q. Okay. So this is dated after this photo, the
 2 one we're looking at here, which we will refer --
 3 A. Yeah, this we believe to be in 1954.
 4 Q. Okay. And let me mark this as Exhibit 109, the
 5 photograph we were just referring to which you
 6 believe to be 1954.
 7 (Exhibit No. 109 was marked.)
 8 BY MR. MCKAY:
 9 Q. Where did this photograph come from that's
 10 Exhibit 109?
 11 A. I believe this -- I believe this came from the
 12 museum, which is now housed at the old Union Pacific
 13 depot.
 14 Q. Okay. All right. What else do you have?
 15 A. This is another photograph looking west from
 16 Gar Creek. This is Gar Creek.
 17 Q. I'll tell you what, if I can go ahead and mark
 18 that as an exhibit --
 19 A. All right.
 20 Q. -- that way the record will show we are
 21 referring to Exhibit 110.
 22 (Exhibit No. 110 was marked.)
 23 A. All right. This is looking west. This is the
 24 depot. This is Oliver Street crossing right here,
 25 and there was a building here.

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1 Now, see, this was prior -- this is what --
 2 this circa early 1950s, but this evidently is prior
 3 because those, those propane tanks either are just
 4 right outside the edge of this photograph, or they
 5 haven't been put in yet.
 6 Q. Okay. Let me ask you this question. Is that
 7 the depot?
 8 A. Yes.
 9 Q. Okay. And it looks like there is, in Exhibit
 10 Number 110, a boxcar that is sitting on a side track
 11 near the depot, or is that a building, or do you
 12 know?
 13 A. That's another building.
 14 Q. Okay.
 15 A. I think that the tracks -- no, they -- see, at
 16 one point in time the tracks, the tracks went all of
 17 the way around.
 18 Q. That was where I was going with that.
 19 A. Okay. Say this is the depot. At one point in
 20 time, and you will find this in the city ordinances
 21 where it shows the tracks going all of the way. This
 22 is the main line.
 23 There was either two or three tracks here,
 24 and this, this being Water Street back at that point
 25 in time, which it's now River Street.

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1 Q. Right.
 2 A. But this, this was a track built during the
 3 second World War that actually went all of the way up
 4 Water Street and curved back into the main line here.
 5 Q. It actually went on the north side of the
 6 depot?
 7 A. Oh absolutely. It went right down through
 8 that.
 9 Q. Okay. All right. Let me -- I'm going to put a
 10 north arrow on here. Do I have that direction?
 11 A. That's correct.
 12 Q. Correct?
 13 A. Yeah.
 14 Q. Okay. Just so that, I'm going to draw
 15 crossties on the track we were talking about that
 16 runs north, ran north of the depot?
 17 A. Uh-huh.
 18 Q. Is that accurate?
 19 A. Well, to my drawing.
 20 Q. Right. It's not to scale. I understand that.
 21 And then you say this is River Street right here?
 22 A. Right. It ran parallel with it.
 23 Q. Okay. I will just put River Street.
 24 A. But that was only during the war emergency
 25 time. It was taken out, to my knowledge, directly

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Page 49 1 after that. 2 Q. Okay. And that was my next question. We will 3 go ahead and mark the drawing as Exhibit 111, just so 4 we can have a record of it. 5 (Exhibit No. 111 was marked.) 6 BY MR. MCKAY: 7 Q. Exhibit 111 is a drawing showing a track that 8 used to exist in Ozark that ran north of the depot; 9 correct? 10 A. Temporary, a temporary track. 11 Q. Your understanding is it was put in for 12 purposes of the war? 13 A. Yes. 14 Q. Okay. And taken out sometime after the war? 15 A. Yes. 16 Q. Okay. And we have a photograph in Exhibit 110 17 which is dated in the 1950s? 18 A. Yeah. 19 Q. Who dated that photograph in the fifties? Do 20 you know where that came from? 21 A. Well, I dated it in the fifties, just based on 22 what I can see where these silos are. 23 Q. Okay. 24 A. And the rodeo grounds. This used to be the old 25 fair building, the canning factory.	Page 51 1 BY MR. MCKAY: 2 Q. Go ahead. 3 A. Okay. This just shows further west of the 4 depot, further west than the Oliver Street crossing. 5 This is where 4th Street used to cross to go down to 6 the ferry before the river bridge was completed in 7 1931. 8 This is the ferry right here, and there is 9 buildings -- the railroad track is right below -- 10 this is the bluff line here. 11 The railroad track -- you can see a 12 building down here on the flatter ground. The 13 railroad track is between that building and this, you 14 know, this ledge. There is a land mass in between 15 there. 16 Q. Okay. So just so the record is clear, looking 17 at Exhibit 112 you see the roof of a building kind of 18 in the lower left-hand portion of the photograph. 19 The tracks would have run north of that building? 20 A. Yes. 21 Q. All right. 22 A. And there was also a building under the bridge 23 over here that was there for years and into my early 24 years here. 25 This, the remnants of this Fourth Street
Page 50 1 Q. The railroad track that we've got depicted on 2 Exhibit 111 running north of the depot, is it shown 3 in Exhibit 110? 4 A. No, I don't think so. 5 Q. Okay. 6 A. I can't see it. But you're -- what you're 7 seeing here, this spur, this old abandon rail car 8 that's sitting down there now used to serve these 9 businesses right here off of, off of River Street. 10 Q. Okay. 11 A. So that's what -- and they were taken out years 12 ago. 13 Q. Okay. And that was my question. In Exhibit 14 110 the spur that's furthest to the north does not 15 exist anymore? 16 A. True. 17 Q. Okay. I'm with you. 18 A. But during this time there's that same access 19 road, you know, existed crossing all of them going 20 down to, to those residences and the businesses and 21 so forth across the tracks, so. 22 Q. Let me mark this one before you start talking, 23 just so we can refer to it. We'll mark the 24 photograph as Exhibit 112. 25 (Exhibit No. 112 was marked.)	Page 52 1 crossing, which incidentally, and there is no record 2 of it ever being closed either, public record anyway, 3 but it's just to show that there were -- not only 4 were there buildings south of the tracks down east of 5 the depot, there were also buildings south of the 6 track west of the depot. 7 Q. Okay. And the 4th Street crossing was a 8 crossing to access the ferry? Was that the purpose 9 of the 4th Street crossing? 10 A. Probably the main purpose yes. 11 Q. Okay. 12 A. Well, that, and to get to these structures down 13 there. 14 Q. Okay. What, what is -- what is your knowledge 15 of there being a 4th Street crossing, what is that 16 based on? Is that based on research that, that you 17 came across or -- 18 A. Yes. And it still exists. Leading down to the 19 railroad tracks it's still a, it's still a city 20 property. 21 Q. Okay. There still is a crossing at 4th Street? 22 A. No. 23 Q. Okay. 24 A. There is not a crossing, but the access down to 25 where the old crossing was still exists.

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1 Q. Okay.

2 A. The city still owns that as a street, you know.

3 It's not a used street now because it's been, it's

4 been blocked off.

5 Q. Do you know when the 4th Street crossing was

6 removed?

7 A. I do not know when.

8 Q. Okay.

9 A. It's, it -- there was still access to it in the

10 fifties. I can tell you that. That's my, you know,

11 that's my knowledge.

12 Q. Do you recall it?

13 A. Yes.

14 Q. In the fifties?

15 A. Yes, early fifties.

16 Q. All right, okay. Do you have another

17 photograph?

18 A. I have several.

19 Q. Let's mark the next photograph as Exhibit 113.

20 (Exhibit Nos. 113 - 119 were marked.)

21 (Five-minute break.)

22 BY MR. MCKAY:

23 Q. We are back on the record. We have labeled

24 several photographs, 113 through 119. If you will,

25 just walk me through the photographs and tell me what

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1 you've got here and how it relates to what we are

2 discussing.

3 A. Okay. These are taken from Google maps. The

4 first one we're looking at is a Google map that shows

5 it was taken at 3-13-1994, and it distinctly shows

6 the propane tanks, Oliver Street -- incidentally

7 Oliver Street basically ran all of the way down to

8 Gar Creek.

9 And, of course, this is Gar Creek now with

10 the river being flooded with the lock and dam, but

11 you can distinctly see the --

12 Q. Okay. And on the photograph the propane tanks

13 that we are referring to, they are the white objects

14 south of what is obviously a cut of cars on the

15 tracks?

16 A. Yeah.

17 Q. Okay.

18 A. Yes.

19 Q. Okay.

20 A. To qualify that, this is the best photograph I

21 can get. It's very -- when you bring it up on your

22 computer screen from Google map it's quite large, and

23 you can zoom in and out on it, but if you're trying

24 to take photographs or copies of it, that's the best

25 I could get.

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1 Q. Okay.

2 A. This is a zoom-in of that very same one up

3 close where you can see the propane tanks.

4 Q. Okay. And just for the record, we are now

5 talking about Exhibit 114.

6 A. Uh-huh. That's just a copy of that.

7 Q. All right. Exhibit 115 now.

8 A. Okay.

9 Q. If you'll talk me through it.

10 A. What year is that?

11 Q. Exhibit 114 says '94.

12 A. Okay. This is 2001. And as you know, this is

13 what concerns us and me specifically. You go back in

14 this. This was clean.

15 This was -- you could view the river. You

16 could view -- the river is a natural resource that

17 many cities would just kill to have, and yet we are

18 just being denied access to it, and not only denied

19 access to it, but we are being denied even able to

20 view it because of all of the junk that's grown up

21 along the river bank now. But as I go through these,

22 look at the difference of from a few years ago --

23 Q. Okay.

24 A. -- twenty years ago, I guess.

25 Q. And let me ask you a question about 114. The

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1 areas, I mean, you obviously see some vegetation --

2 A. It's not even waist high, though. You can walk

3 through it.

4 Q. And are you testifying to that based upon what

5 you recall at that time?

6 A. In the early nineties, yes.

7 Q. Okay. Because from the photograph you

8 obviously can't tell the height of the vegetation?

9 A. Exactly, yeah.

10 Q. All right.

11 A. During this period of time there -- even after

12 the water came up people would use, they were using

13 Oliver Street to come down in these areas like this

14 to put their boats in the water, flat bottom boats

15 and so forth for fishing.

16 Q. Did you know people that actually did that?

17 A. Yes.

18 Q. Who were those people?

19 A. Well, one was Marshall Chrisman.

20 Q. Is he still around?

21 A. To my knowledge, yes.

22 Q. Marshall Chrisman?

23 A. Uh-huh.

24 Q. Do you know if that's C-r-i-s-t-m-a-n?

25 A. C-h-r-i-s-t-m-a-n, I believe.

14 (Pages 53 to 56)

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Page 57 1 Q. Okay. 2 A. But anyway, there's others in town, there are 3 others in town that did the same thing. And here in 4 2001, seven years later, you can start seeing -- you 5 can tell the height of the brush just by looking at 6 the expanse, how it expands out, but this is starting 7 to where it's starting to grow up again. 8 Q. Okay. Let me ask you this, the people that 9 launch boats, is that based on what individuals have 10 told you, or do you -- did you ever launch a boat or 11 see somebody launch a boat? 12 A. It's what individuals told me, and I'm trying 13 to think. I'm, I'm, I'm on the -- I can't recall 14 seeing anyone down there doing it. 15 Q. Okay, okay. 16 A. I think I have, but I can't recall that. 17 Q. Okay. Now, just for the record, we're looking 18 at Exhibit 116. 19 A. Okay. Now you can see more of the debris when 20 it's talking about the height of it, you know, as it 21 grows higher, it starts spreading out more. 22 Now you are starting to see -- this is in 23 2001 the -- supposedly the Oliver Street crossing was 24 taken out by UPR in February the 2nd, 2001. That is 25 when I was told.	Page 59 1 into it. You want to refer to that one, too. 2 Q. That was Exhibit 116, and now we're looking at 3 Exhibit 117. 4 A. Even more so grown up. Now, if we go back to 5 113, if you're coming around this bend in the road 6 coming from the crossing down at the lock and dam 7 there's a railroad crossing here. It's approximately 8 a thousand yards from where this curve starts to that 9 railroad crossing. 10 Q. At the lock and dam? 11 A. At the lock and dam. 12 Q. Okay. 13 A. It's approximately a -- that is a straight -- 14 I'm saying before the curve starts, so you have a 15 straight line there. 16 It's approximately a thousand yards before 17 this curve starts going west from a straight line. 18 In other words, it's about the same distance. 19 You can, you can see across this area. If 20 I'm an engineer I could, I could see way ahead of me 21 going here. 22 With it all grown up they can't see 23 anything, of course, but as far as one -- if this, if 24 this crossing at the lock and dam is a safe crossing, 25 there's no reason that this can't be a safe crossing.
Page 58 1 Q. Okay. 2 A. This is February the 4th. 3 Q. Who told you it was taken out February 2nd? 4 A. That is just some records that I've seen that 5 has been passed around at different places that it 6 was taken out the, the magic date, early February. 7 Q. Do you know what records those are? 8 A. No. 9 Q. I mean, is that -- 10 A. No. 11 Q. Okay. 12 A. Okay. In 2006 we start to see it had grown up 13 more down there. 14 Q. Okay. 15 A. Of course, the tanks are gone here. 16 Q. In 2001? 17 A. Yeah. 18 Q. Okay. 19 A. So they -- this had to be -- this one had to be 20 taken just immediately after the propane tanks were 21 removed. 22 Q. Okay. 23 A. My only comment on this is that you're starting 24 to see -- you are starting to see where the rail used 25 to be but you are starting to see the growth come	Page 60 1 It's the same environment. 2 Q. Let me ask you a question. You said you can 3 see -- you were talking about the distance that an 4 engineer could see? 5 A. Uh-huh. 6 Q. Describe what you were saying again. Were you 7 saying if an engineer is at a certain point on the 8 tracks he would be able to see the Oliver Street 9 crossing? 10 A. Well, you can see in that direction, sure. You 11 would be able to see -- because it wasn't so grown up 12 then. 13 You have the same -- you have the same -- I 14 guess I want to use the word "environment" again 15 going to the east to this rail crossing down here 16 coming out of the curve as you do going this way 17 coming into the curve. 18 Q. Okay. 19 A. And since it's been allowed to grow up so much 20 down there, my gosh, you -- it's nothing but 21 obstructions. 22 Q. Okay. 23 A. You know, you really can't see anything. 24 Q. Now you -- 25 A. I just think it's a lot safer if that debris

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Page 61 1 was cleaned off the, off the -- well, the 2 right-of-way as well as one thing, and the land 3 that's south of the right-of-way. 4 Q. Okay. Your statement as far as how far an 5 engineer could see, I want to make sure I understand 6 the basis of what that is. 7 Is that your assumption based on just 8 looking on the photographs? Have you ever actually 9 been out on the tracks and thought, okay, or actually 10 seen you can see this far up the tracks? 11 A. No. It's just based on assumption from the 12 photographs. 13 Q. Okay. 14 A. Yeah. 15 Q. All right. 16 A. Yes. 17 Q. Okay. 18 A. I'm kind of like in the practice of law, you 19 have opinions, you know. That's my opinion. 20 Q. And that's what I am trying to figure out is I 21 know an opinion when I hear it, but I need to make 22 sure I understand the basis for that opinion, so. 23 Okay. We were -- let's see, I think we had 24 talked about 117. Now, 118 and 119 may be out of 25 order as far as the dates, and I think they are. So	Page 63 1 into the depot area. 2 Q. Okay. All right. Is there any other 3 information that you have as to the use of this land 4 that's south of the railroad tracks, historical use, 5 is there anything else you wanted to share or any 6 other information that you have? 7 A. Yes. 8 Q. Okay. 9 A. I mentioned earlier that the sewer line ran 10 under the tracks and was actually dumped into an open 11 ditch, which the open ditch dumped into the river. 12 This is a photograph from City Hall and the 13 water department showing the pipe casement that ran 14 under the railroad crossing. 15 Q. Okay. And this is labeled as Exhibit 120. 16 (Exhibit No. 120 was marked.) 17 BY MR. MCKAY: 18 Q. And this is a photograph of what did you say, 19 of? Is it a drawing? 20 A. A sewage pipe encasement drawing for the 21 railroad crossing. In other words, this is what ran 22 under the railroad track, their drawing or their 23 rendering of it. 24 Q. And how do you know that this pipe encasement 25 drawing relates to the -- are you saying it relates
Page 62 1 I misnumbered those. 2 The next photograph in time chronology 3 looks like Exhibit Number 119, which according to 4 Google was September 15th, 2010. 5 A. Uh-huh. 6 Q. Okay. Is there anything on that photograph you 7 want to show me? 8 A. No. By this time, of course, by 2010 this will 9 be nine years after the -- well over nine, nine and a 10 half years practically after the Oliver Street was 11 removed, and you can see how much it's grown up down 12 there. You can't, you can't really define where the 13 road even used to be. 14 Q. Okay. 15 A. And this -- well, I will let you direct me. 16 Q. Okay. Then the last photograph that we have in 17 this series is -- actually, it's marked Exhibit 118, 18 but it's dated 10-26-2012. Anything else that you 19 want to tell me about the photograph? 20 A. No. It's just further support of what I have 21 been saying about it's just so grown up now that you 22 have to be right on top, right into the curve before 23 you can see practically anything. 24 If this was removed as you're coming across 25 the bridge here you can see all of the way easily	Page 64 1 to the city dump? 2 A. It relates to getting the disposal of sewage 3 from the City of Ozark to the Arkansas River. 4 Q. Okay. So is this pipe still in existence? 5 A. I could not answer that. 6 Q. Okay. Do you know where this pipe was located? 7 A. I know the general vicinity. 8 Q. What is the general vicinity? 9 A. Near Oliver Street. 10 Q. Okay. And how is it that you know that? 11 A. Here again, it's back to where, supposedly, the 12 people from S&F Lumber Company and the propane 13 company said the sewage stink was so bad that they 14 couldn't hardly stand it, and it supposedly ran down 15 into this general vicinity right here. 16 Q. Okay. Based on what Mr. Allred and Mr. Smith 17 told you? 18 A. Right. 19 Q. Okay. All right. 20 A. Yep. This -- of course, the crossing is up 21 here, and it would have been just not too far east -- 22 in fact, there is still some drawings that show where 23 the water line and the sewer lines went into the 24 depot, and they crossed just east of the depot. 25 Q. You say they crossed east of the depot, you --

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Page 65 1 A. The water and sewer lines. 2 Q. Crossed under the tracks? 3 A. Under the track. 4 Q. So there were sewer lines from the depot 5 leading to the river? 6 A. No, no. 7 Q. Okay. 8 A. It was east of the depot. I don't know if 9 there was sewer. 10 Q. Oh, I see what you're saying. Okay. I thought 11 you said there were pipes from the depot. 12 A. No, no, no, no. 13 Q. Okay. 14 A. I'm not sure that the, from what I could find 15 that there was even sewer, sewage disposal from the 16 depot. 17 Q. Okay. 18 A. This shows the sewer line south of the railroad 19 tracks. 20 Q. Okay. Let's label -- 21 A. Now, this is at Town Branch, which Town Branch 22 is west of the depot. 23 Q. I'm going to label this photograph as Exhibit 24 121. 25 (Exhibit No. 121 was marked.)	Page 67 1 from Mr. Allred and Mr. Smith, or is this a different 2 line? 3 A. No. This is just supporting that there was two 4 different sewer lines running into the Arkansas 5 River, one of them being the one we just talked 6 about. 7 Q. Okay. 8 A. This, this is a copy of the, where the -- and 9 they don't -- these are old documents. 10 Q. Let me -- before you start talking let's mark 11 this one next one as Exhibit 122, so we have a 12 record. 13 (Exhibit Nos. 122 and 123 were marked.) 14 BY MR. MCKAY: 15 Q. All right. Explain what Exhibit 122 is. 16 A. Well, you can do your best to look at that. 17 This shows where the sewer line went down and then 18 starting dumping into the river, and the railroad 19 tracks are in this general area here. The original 20 documents are still at City Hall. 21 Q. Okay. 22 A. And that's one and the same, I believe. 23 Q. Yeah, I think it's a duplicate. Okay. 24 A. One is a little bit clearer than the other one. 25 Q. So 123 and 122 are generally the same
Page 66 1 BY MR. MCKAY: 2 Q. The sewer line south of railroad tracks at Town 3 Branch, so what is Town Branch? 4 A. Town Branch is the -- it's a creek that runs 5 through the, through the -- well, basically through 6 the city and then dumps into the Arkansas River. 7 Q. Okay. And where -- it crosses under the tracks 8 at some point? 9 A. Yes. 10 Q. Do you know where it crosses under the tracks? 11 A. It crossed under the track. I don't know that 12 it -- 13 Q. Okay. 14 A. It doesn't still cross under the track. 15 Q. Okay. 16 A. It may cross under the track. It's not being 17 used. 18 Q. Do you know where it did cross under the 19 tracks? 20 A. Yes. It would be up about, between 10th and 21 14th Street, somewhere in that general vicinity. 22 That's where the -- we would have to look on the city 23 map to get exactly what the street address is. 24 Q. And is this sewer line the same one you were 25 talking about, as far as the location you learned	Page 68 1 photograph. Okay. 2 A. Here are pictures of the remnants. 3 Q. Label this as Exhibit 124. 4 (Exhibit No. 124 was marked.) 5 MR. MCKAY: Okay. And the next one we 6 will label as 125. 7 (Exhibit No. 125 was marked.) 8 MR. MCKAY: We will also go ahead and 9 label 126. 10 (Exhibit No. 126 was marked.) 11 BY MR. MCKAY: 12 Q. So the record is clear, the first exhibit we 13 are going to talk about is Exhibit 124. 14 A. Okay. These photographs show the remnants of 15 Oliver Street, the asphalt remnants of Oliver Street 16 on the north side of the track. 17 Q. Okay. We are looking at Exhibit 125. 18 A. This shows the remnants of, asphalt remnants of 19 Oliver Street in the center of the main track. 20 Q. Okay. And looking at Exhibit 126. 21 A. This shows asphalt remnants of Oliver Street on 22 the south side of the track. 23 Q. I see. 24 A. There is remnants in the, in the -- it was 25 asphalted across the tracks, just like you would at

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1 **either -- just like it would any other city crossing**
 2 **or something.**
 3 Q. Okay. Let's label the next document.
 4 **A. Sure.**
 5 MR. MCKAY: The next document we will
 6 label as Exhibit 127.
 7 (Exhibit No. 127 was marked.)
 8 BY MR. MCKAY:
 9 Q. And if you'll just explain what Exhibit 127 is.
 10 First of all, do you want to mark this as a separate
 11 exhibit?
 12 **A. Well, it has to do with this.**
 13 Q. Okay. Let's just -- for the record, Exhibit
 14 127 is a three-page exhibit. The first page is a
 15 couple of emails, the second page is the last line of
 16 an email, and the third page is a photograph that was
 17 an attachment to the email?
 18 **A. Uh-huh.**
 19 Q. You have to answer out loud.
 20 **A. Yes.**
 21 Q. Okay. All right. Go ahead and explain to me
 22 what that is.
 23 **A. All right. We were talking about this curve**
 24 **earlier. I was talking about the curve earlier, it**
 25 **being a gradual, gradual curve.**

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1 **And, here again, this map, when you go on**
 2 **Google you can get a lot better map, but this, this**
 3 **is the curve just east of here about six miles or**
 4 **seven miles.**
 5 **It makes nearly a 45-degree turn, and yet**
 6 **it has a crossing on each side of the curve. And**
 7 **there has been argument that this curve is unsafe is**
 8 **why this Oliver Street was taken out and so forth**
 9 **like that.**
 10 **We have a bend in a curve that they have a**
 11 **thousand yards on each side of it for, before the**
 12 **curve even starts to be slowing the engines down, and**
 13 **just east of here six to seven miles you have**
 14 **practically a 45-degree turn in a curve that has a**
 15 **crossing just before you enter it from the west and**
 16 **just before you enter it to the east, and that's my**
 17 **argument on that.**
 18 Q. Okay. This, I think, is an opinion that we
 19 were talking about earlier, one of the opinions that
 20 you hold?
 21 **A. Yes.**
 22 Q. And just to understand the basis for it, you
 23 don't hold yourself out as an expert in railroad
 24 crossing safety; do you?
 25 **A. If you don't hold yourself out as an expert on**

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1 **law, then I'll say that I will take the same position**
 2 **you do.**
 3 Q. Well, do you have any experience in designing
 4 railroad crossings?
 5 **A. No.**
 6 Q. Okay. Do you have any education courses,
 7 anything in the factors that one considers when they
 8 install or -- when they design or install a crossing?
 9 **A. No.**
 10 Q. Okay. What is the basis for the opinion that
 11 you think the crossing would be safe here in Ozark?
 12 **A. Observation and logic.**
 13 Q. Okay. So no particular expertise, just
 14 commonsense?
 15 **A. Experience, and to some degree, I mean, we, we**
 16 **live by life experiences, and if I can see something,**
 17 **then I'm going to be forewarned if I can see it. If**
 18 **I can't see it, I'm not going to be forewarned.**
 19 Q. All right. You have never been retained to
 20 offer an opinion on the safety of railroad crossings;
 21 correct?
 22 **A. Correct.**
 23 Q. Okay. Okay. Anything else on Exhibit 127?
 24 **A. No.**
 25 Q. Okay.

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1 **A. Yes, there is. Yes. These are the numbers of**
 2 **the crossings that -- there has been -- there are**
 3 **six -- well, actually there are seven railroad**
 4 **crossings in the county, and that's the Oliver Street**
 5 **crossing that's within just -- oh it's from what we**
 6 **call Poppin Bottom to the west of here to there.**
 7 **And each one of these crossings -- or not**
 8 **at each one of the crossings. There is two, two of**
 9 **these which I have them also marked on here, and this**
 10 **wouldn't blow up large enough for us to read, but we**
 11 **were talking about having to -- the house tracks that**
 12 **has become so important here in Ozark to have trains**
 13 **meet each other and pull off and everything.**
 14 **Well, Poppin Bottom has house tracks that**
 15 **are far longer than what is in Ozark as far as down**
 16 **here in Alice (phonetic), just as well, just a matter**
 17 **of a short distance from here.**
 18 **I guess this is another question I have is,**
 19 **first off, how many trains are going to meet here**
 20 **that's going to require house tracks in a week,**
 21 **month, year.**
 22 **Is it one, or is it 20 a day, or is it two**
 23 **a year or, you know, whatever, because we have --**
 24 **there's a facility west of here, there is a facility**
 25 **east of here to serve the same purpose. I don't --**

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1 **that's what I don't understand.**
 2 Q. Okay.
 3 **A. And I'm looking for your opinion on that.**
 4 Q. Well, I don't have an opinion on that.
 5 MR. BROCKETT: That's not the way it
 6 works, Royce. You don't get to ask
 7 questions.
 8 MR. MCKAY: We are here to get facts,
 9 to ask fact questions.
 10 BY MR. MCKAY:
 11 Q. Okay. Was there anything else on Exhibit 127
 12 that relates to any of the items we've discussed?
 13 **A. These, these are the crossings that I showed**
 14 **Mr. Soliz on August the 5th, 2013.**
 15 Q. And who is Mr. Soliz?
 16 **A. He was the, an expert witness, I guess is what**
 17 **you would call him, that was brought.**
 18 Q. Okay.
 19 **A. That the city hired.**
 20 Q. I see.
 21 **A. But I spent the major part of a day because,**
 22 **you know, showing him the, the different locations**
 23 **and how to get to the rail crossings and so forth**
 24 **like that.**
 25 Q. Okay.

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1 **A. And then I went back and marked them -- I don't**
 2 **know whether I marked them on the map prior to that**
 3 **or marked them on the map after that, but that's**
 4 **where they ended up being marked on the map, and**
 5 **these are the numbers based off of the alignment**
 6 **maps.**
 7 Q. Okay. Okay. If we can have one of the
 8 paperclips, we will keep Exhibit 127 together. Any
 9 other documents that you have relating to the
 10 historical background of this crossing?
 11 **A. Uh-huh.**
 12 Q. Okay.
 13 **A. Yes.**
 14 Q. Let's keep going. Do you want to take a break?
 15 Do we need to take a quick break and stretch?
 16 **A. I am okay if you guys are.**
 17 Q. Okay. If anyone needs a break, just say so.
 18 **A. I'm going to put this away; okay?**
 19 Q. Okay. Let me ask you a question. On the
 20 photograph that you have, which was the first
 21 photograph we marked today, which I believe -- let me
 22 find the exhibit number.
 23 **A. Is that what you're looking for?**
 24 Q. Yes, sir.
 25 **A. Okay.**

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1 Q. Okay. Exhibit 108 is a Xerox copy of the -- of
 2 an actual photo that you brought here today. Is
 3 there -- is there anyplace in town that can actually
 4 copy this as a photograph and print it off as a
 5 photograph?
 6 MR. BROCKETT: Not in town, no.
 7 MR. MCKAY: Okay.
 8 BY MR. MCKAY:
 9 Q. Is that your personal photograph, or does that
 10 belong to the city?
 11 **A. No, it's mine.**
 12 Q. Okay.
 13 MR. BROCKETT: I believe I have that
 14 on a --
 15 MR. MCKAY: You have an electronic
 16 copy?
 17 MR. BROCKETT: Yeah.
 18 THE WITNESS: I have an electronic
 19 also that I can send you if you want.
 20 BY MR. MCKAY:
 21 Q. Well, I'll get with you afterwards, and if we
 22 can get, try to get a good copy of that. If not, we
 23 may ask if there is any way possibly you can the next
 24 time you go to Little Rock to have that
 25 professionally copied so it is a clearer picture.

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1 **A. May I look through them?**
 2 Q. Yes, sir.
 3 **A. These other photographs, not the other aerial**
 4 **photographs.**
 5 Q. Yes.
 6 **A. I don't know where they are right now, but.**
 7 Q. The Google?
 8 **A. No, the aerial. Yeah, this one. I have a**
 9 **digital, you know, a digital copy of this, which**
 10 **makes it much more clearer as well --**
 11 Q. Okay.
 12 **A. -- that I can send to you if you would like.**
 13 Q. And that's Exhibit Number 109. Okay, if you
 14 will just forward that to Mr. Brockett, he can get it
 15 to us.
 16 **A. Okay. I will put this on the table so you**
 17 **can't get it.**
 18 Q. That's fine. You know I had my eye on it.
 19 **A. Okay. We were talking about the -- I was**
 20 **talking about the dirt, the debris and so forth down**
 21 **there.**
 22 **This is a, this is a notice of a violation**
 23 **that was written by the city to Union Pacific with**
 24 **all of the debris, and they have many attached**
 25 **photographs on there.**

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1 Q. Okay. 2 A. That supports what I was saying about the 3 debris and so forth down there. 4 Q. We will mark these documents collectively as 5 Exhibit 128. 6 (Exhibit No. 128 was marked.) 7 BY MR. MCKAY: 8 Q. And these are various ordinances, notice of 9 violation written at different periods of time, and 10 it is a seven-page document, which it looks like the 11 last two pages are photographs. 12 I'm sorry. It's an eight-page document. 13 The last three pages are photographs. The 14 photographs that are attached to Exhibit 128, are 15 those attachments to one of the ordinances, or what 16 are those photographs? 17 A. Those are supposedly, to my understanding, the 18 violations. 19 Q. Okay. In the city records are they actually 20 attached to the Ordinance 2001-15? 21 A. No. They are attached to the violation. 22 Q. Okay. Which is dated August 5th, 2014? 23 A. Uh-huh. 24 Q. Okay. All right. 25 A. Okay. According to an article in The Spectator	1 appears to be it's actually pulling excerpts from the 2 newspaper 75 years ago? 3 A. (Witness nods head.) 4 Q. And it basically talks about Mr. Bryan, land 5 agent for Little Rock Fort Smith Railway for Franklin 6 County has 60,000 acres of railroad lands for sale 7 ranging from 250 to five dollars an acre. 8 And then Exhibit 130 you said is an 9 ownership map of Franklin County dated 1893, and it 10 says the dark areas are land that was granted to the 11 railroad, the Little Rock and Fort Smith Railway 12 Company. How do you know that? Does it say that on 13 the map itself? 14 A. Uh-huh. 15 Q. You just can't read this copy of it? 16 A. Right. 17 Q. Okay. And where is this map that's depicted in 18 Exhibit 130? 19 A. It's available on the internet. 20 Q. Okay. Do you know which website? Is it the 21 Ozark website? 22 A. The -- no, it's not on the Ozark website. It's 23 the -- if you Google railroad history Franklin 24 County, or something like that, then it will pop up, 25 yeah.
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1 September the 2nd, 1938, Union Pacific Railroad owned 2 something 60,000 acres in Franklin County, and... 3 Q. Is this the article that's the flashback 75 4 years ago? 5 A. Right. 6 Q. Okay. 7 A. And this is a copy, the map is a copy of the 8 land mass that was owned by Union Pacific Railroad. 9 And you may ask me what this has to do with anything, 10 and I am going to just say that you can see how much 11 land Union Pacific owned in this county at one point 12 in time. 13 Q. Okay. Let's mark this -- I want to mark these 14 as two separate exhibits. I am going to mark the 15 newspaper article dated September 4th, 2013, as 16 Exhibit 129. 17 (Exhibit No. 129 was marked.) 18 BY MR. MCKAY: 19 Q. And I'll mark the photograph you were just 20 talking about of a Franklin County map Exhibit 130. 21 (Exhibit No. 130 was marked.) 22 BY MR. MCKAY: 23 Q. Now, let me ask you a couple of questions about 24 this. Exhibit 129 is a fairly recent newspaper piece 25 where it's reflecting back 75 years ago, and it	1 Q. Okay. It's on some website that's not related 2 to the City of Ozark? 3 A. Arkansas Historical website, I believe is what 4 it is. 5 Q. Okay. All right. 6 A. Are we ready to get into these? 7 Q. I think so. 8 MR. MCKAY: Let's go off the record 9 just a second. 10 (Off-the-record discussion.) 11 BY MR. MCKAY: 12 Q. Back on the record. You've brought several 13 maps with you here today. Let's just go through. We 14 will label the maps, and then I want you to just 15 explain to me what the map is and what it shows, and 16 why you brought it. 17 So I'm going to label in the bottom 18 right-hand corner the first series of pages is 19 Exhibit 131. If you will just tell what this is. 20 (Exhibit No. 131 was marked.) 21 A. Okay. There has been comments made about there 22 never existed an Oliver Street, and these maps are to 23 prove that, dating back into the earlier years. This 24 one has 1975, which distinctly shows Oliver Street 25 crossing the railroad tracks.

20 (Pages 77 to 80)

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1 Q. Okay. 2 A. This is a blueprint. This is a copy of a 3 blueprint. 4 Q. Where did this blueprint come from? 5 A. Western Arkansas Planning and Development 6 district out of Fort Smith. 7 Q. Is that where you got them? 8 A. No, not where I got it out. That's where it 9 came from. 10 Q. Okay. Where did you get the map? 11 A. You know, I don't recall just immediately. 12 Q. Okay. 13 A. It was maps that we have been accumulating at 14 different points of time, so I don't recall 15 specifically where it came from. 16 Q. And then the second page of Exhibit 131, can 17 you explain what that is? 18 A. This is a, a city map done in 1962, which, 19 unfortunately, I didn't take the entire -- I didn't 20 have the ability to take the entire copy of, which 21 this is a small portion of the entire thing, which 22 incidentally dropped off the portion down here. You 23 can just barely see, you know, right there. 24 Q. Okay. 25 A. So we know this is a 1962 map, and this came	1 Q. Exhibits 132 and 133, can you explain where you 2 obtained these documents? 3 A. I believe they came from Ozark City Hall 4 archives. 5 Q. Okay. And when you say the "City Hall 6 archives," is that an office that's in the 7 courthouse, or it's a separate building, or what is 8 that? 9 A. No. It's at City Hall near 29th Street. I 10 don't know, 2911, I think it is. 11 Q. Okay. And did you actually go pull these 12 documents yourself, or did someone else? 13 A. They came from there. I did not personally 14 pull them. 15 Q. Okay. Did you request these documents from the 16 archives? 17 A. Yes. 18 Q. Okay. Do you know who did pull them? 19 A. No. 20 Q. Do you know who the custodian of these 21 documents is? 22 A. No. 23 Q. Okay. Do you know who works there? Anybody 24 that works up there? 25 A. At which point in time? What part of history?
Page 82	Page 84
1 out of the city, city archives. 2 Q. Okay. Let me -- since this second page is -- 3 the second page of Exhibit 131 is not the same map as 4 exhibit the first page? 5 A. No. 6 Q. Okay. Let's mark it as a separate exhibit. 7 Can we do that? First, what I'll do is, is this a 8 copy that we can have, or do you need that back? 9 A. Sure. 10 Q. Okay. I will mark as Exhibit 132 the entire 11 map that you've brought with you today from the City 12 of Ozark dated February 1962. 13 (Exhibit No. 132 was marked.) 14 BY MR. MCKAY: 15 Q. Then we will mark as Exhibit 133, which I 16 understand, according to your testimony, is just a 17 blown up, a blow-up of a smaller section of Exhibit 18 132? 19 (Exhibit No. 133 was marked.) 20 A. True. 21 Q. Okay. 22 MR. BROCKETT: Let's go off the record 23 for a minute. 24 (Off-the-record discussion.) 25 BY MR. MCKAY:	1 Q. Now, presently. 2 A. Yes. There's Sonya Eveld is the city clerk, 3 and T.R. McNutt, who is now the mayor, and Jan Stacy 4 is the secretarial assistant. 5 Q. Okay. All right. Go ahead. You wanted to say 6 something about what's on the map. 7 A. Well, just that this -- and I didn't mean to 8 step on you there -- Oliver Street, and it distinctly 9 shows that the F&S Lumber Company with a number for 10 Oliver Street, as well as the residences down there. 11 And they were listed -- they are also 12 listed in a phone book, and there was mail delivered 13 to them. They had city water, which I will show you 14 shortly. There is a three-quarter inch water line 15 that went down to serve water to these folks. 16 Q. Let me ask you this question. The numbers that 17 are on the structures, is it your understanding those 18 are actually the street numbers, I mean, throughout 19 the whole map? 20 A. It's my understanding, yes. 21 Q. Okay. And is that -- what is that 22 understanding based on? 23 A. That these are house numbers that actually had 24 mail delivered to them. 25 Q. Okay. But what's the basis of that? Why is it

21 (Pages 81 to 84)

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1 that you think that?

2 **A. Ignorance, I guess.**

3 Q. Or commonsense?

4 **A. Yes.**

5 Q. Okay. All right. What I'm trying to ask is

6 did anyone say that's what those numbers mean?

7 **A. No, no.**

8 Q. Okay.

9 **A. It's just a conclusion I drew.**

10 Q. Got it. Okay. All right. We will wrap these

11 back up.

12 (Off-the-record discussion.)

13 BY MR. MCKAY:

14 Q. Okay. The next map -- you tell me which map do

15 you want to go over next?

16 **A. This is a Map Quest map --**

17 Q. Okay.

18 **A. -- that we just, just took a copy of it just**

19 **because it shows not only Oliver Street crossing the**

20 **railroad tracks, it still shows 4th Street crossing**

21 **the railroad tracks that led down to the old ferry**

22 **location, as well as down to the, under the Ozark**

23 **River bridge.**

24 Q. Okay. The document we're talking about is

25 labeled as Exhibit Number 134.

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1 (Exhibit No. 134 was marked.)

2 BY MR. MCKAY:

3 Q. Is this a Map Quest map that you pulled off of

4 Map Quest?

5 **A. Yes.**

6 Q. Okay. Any idea what the source of their

7 mapping is for Map Quest?

8 **A. No.**

9 Q. Okay. When did you pull this Exhibit 134 off

10 the internet, within the last few years?

11 **A. A year and a half ago.**

12 Q. All right. Okay.

13 **A. Let's see what this small one is.**

14 (Off-the-record discussion.)

15 BY MR. MCKAY:

16 Q. Okay. We are going back on the record. We are

17 going to label the next set of maps as Exhibit 135.

18 (Exhibit No. 135 was marked.)

19 BY MR. MCKAY:

20 Q. Exhibit 135 is a two-page document, and I'll

21 let Mr. Gattis explain what Exhibit 135 is and where

22 he obtained it.

23 **A. This was obtained from the map, the map room in**

24 **Omaha, Nebraska, Union Pacific Railroad, which was**

25 **introduced earlier about when and where that came**

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1 from. I believe it was June of 2013.

2 Q. Okay.

3 **A. And the specific thing about it, it's showing**

4 **that mile marker 6406 plus 84 that distinctly says**

5 **that the Oliver Street crossing is a public crossing,**

6 **and also that it has crossbucks there.**

7 Q. Okay. Anything else?

8 **A. Yes. It shows an 8-inch steel casing natural**

9 **gas pipeline coming under the railroad tracks at that**

10 **general location.**

11 Q. Is that location marked 6404 plus 72?

12 **A. 6404 plus looks like 82.**

13 Q. Okay. I see. All right. Do you know what

14 that was for?

15 **A. No, I do not.**

16 Q. Okay.

17 **A. I may have to go -- we'll have to go to another**

18 **map to show the three-quarter inch water line. I'm**

19 **not finding it right now. That's all I have on this**

20 **one.**

21 Q. Okay.

22 **A. But one of the things we can look at is where**

23 **this -- this is about the center of this curve. This**

24 **is Gar Creek, where Gar Creek comes in and the bridge**

25 **is.**

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1 And if you can look on each side you can

2 see the equalness of the approach to this, to this

3 curve, both east and west.

4 If this crossing down here is safe coming

5 out of the curve, then there is nothing to make this

6 not safe going into the curve.

7 Incidentally, back to this, this is prior

8 to the sale of these, these -- this is lot, call that

9 Tract 10 and Tract 11. This is Tract 11 was where

10 the propane tanks used to sit.

11 Q. Okay.

12 **A. And this is prior to the river being flooded.**

13 Q. What year was the river flooded, do you know?

14 **A. They use the, they used the same maps and just**

15 **update them.**

16 Q. Right, because it's updated through 1981?

17 **A. Uh-huh. This one is.**

18 Q. This one up through '73?

19 **A. It's showing this one is June the 30th 1948, it**

20 **looks like.**

21 Q. The original date?

22 **A. Uh-huh.**

23 Q. Okay.

24 **A. That map would be 1946. I said '48.**

25 Q. Okay. The next?

22 (Pages 85 to 88)

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1 **A. This one is -- are we ready?**
 2 Q. Let's mark it before we talk about it so we
 3 know what it is. The next exhibit we will mark as
 4 Exhibit Number 136.
 5 (Exhibit No. 136 was marked.)
 6 BY MR. MCKAY:
 7 Q. Is this just one page?
 8 **A. Yes.**
 9 Q. A single-page map. Okay.
 10 **A. Now this one, this one has been updated through**
 11 **'78.**
 12 Q. Okay. Where did you get this map?
 13 **A. From the same source as the other alignment**
 14 **maps.**
 15 Q. Okay.
 16 **A. Union Pacific in Omaha, Nebraska.**
 17 Q. Okay.
 18 **A. Okay. Oliver Street crossing, public crossing**
 19 **has the sawbucks, three-quarter inch water line**
 20 **running under the tracks to serve the homes.**
 21 Q. When you say "a three-quarter inch water line
 22 to serve the homes," is that your knowledge just
 23 based on reading the map, I presume?
 24 **A. No. My knowledge is that from Mr. Smith, who**
 25 **the water service went to F&S Lumber Company to the**

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1 **propane company. They had an outdoor spicket down**
 2 **there that they used with city water.**
 3 Q. Okay.
 4 **A. Now, the residents, I have not talked to any of**
 5 **the, you know, any of the people who resided down**
 6 **there.**
 7 Q. Okay. All right. Anything else on Exhibit
 8 136?
 9 **A. Interesting that they are still showing a**
 10 **public crossing at 4th Street.**
 11 Q. Well, do you know how these are updated? Do
 12 you know if they delete things or just add things to
 13 it?
 14 **A. No, I do not know that.**
 15 Q. Okay.
 16 **A. Other than just going through them, and it**
 17 **appears that they add and actually subtract from**
 18 **them, so. It would be a good question to ask the map**
 19 **room, I suppose.**
 20 Q. All right. The next exhibit we'll label as
 21 Exhibit 137.
 22 (Exhibit No. 137 was marked.)
 23 BY MR. MCKAY:
 24 Q. Can you describe for the record what this map
 25 is and where it came from?

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1 **A. From the map room.**
 2 Q. In Omaha?
 3 **A. Omaha, Nebraska.**
 4 Q. Okay.
 5 **A. Reinforcement of the, of the, of the Oliver**
 6 **Street crossing, public crossing indicated on the, on**
 7 **the Union Pacific's maps specifically with the, with**
 8 **the sawbuck.**
 9 Q. Okay.
 10 **A. This one actually shows a donation of the city,**
 11 **of the depot to the City of Ozark.**
 12 Q. Okay. Do we have a date on this?
 13 **A. There is not -- there was a schedule up in**
 14 **the -- all of these were done in '46, and they've**
 15 **updated them from '46.**
 16 Q. Okay.
 17 **A. But the interesting thing, remember the other**
 18 **one where it showed Lots 10 and 11, this is, this is**
 19 **after this property had been sold down here to**
 20 **private parties. Tract 10 and 11 was a much larger**
 21 **tract.**
 22 Q. I didn't remember it -- one of the previous
 23 maps referred to Tracts 10 and 11?
 24 **A. Yes.**
 25 Q. Okay. I did not remember that.

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1 **A. Yeah, and then this tract here was sold way up**
 2 **into the seventies on Tract 9.**
 3 Q. So this Tract 10, and when we say "tract," we
 4 are talking about t-r-a-c-t; correct?
 5 **A. T-r-a-c-t.**
 6 Q. Okay. Tract 10, do you know if this is still
 7 owned by the railroad?
 8 **A. To my knowledge.**
 9 Q. Okay.
 10 **A. They are claiming it.**
 11 Q. And is that, is that the land that the railroad
 12 leased to the propane company; do you know?
 13 **A. A portion of it.**
 14 Q. Okay.
 15 **A. To my knowledge.**
 16 Q. All right. And then is this another, south of
 17 Tract 10 is this another tract that is cut off, or do
 18 you know?
 19 **A. This, this, I don't know what it's for.**
 20 Q. Okay.
 21 **A. This -- this appears to have left a metes and**
 22 **bounds boundary from their 50 foot easement going**
 23 **through here, and this, to my knowledge, is where the**
 24 **propane tanks sat right there.**
 25 MR. MCKAY: Okay. All right. Okay.

23 (Pages 89 to 92)

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1 The next map we'll mark as Exhibit 138. 2 (Exhibit No. 138 was marked.) 3 BY MR. MCKAY: 4 Q. If you will just slide, is this another map you 5 got from Union Pacific? 6 A. Yes, and it's a duplicate of the one that we've 7 already looked at. 8 Q. So we don't need to look at it? 9 A. No. 10 MR. MCKAY: Okay. Okay. The next map 11 we will mark as Exhibit 139. 12 (Exhibit No. 139 was marked.) 13 BY MR. MCKAY: 14 Q. And if you will explain what this exhibit is 15 and where it came from. 16 A. Well, I'm not sure I can explain it. 17 Q. Okay. 18 A. It's a picture of a topo that didn't come out 19 very well. 20 Q. Okay. 21 A. And evidently the only reason I kept it was to 22 show the physical land mass that once existed. This, 23 this map came from the agricultural office. It used 24 to be the conservation, soil conservation office, but 25 I don't know what they're called now.	1 and this is that berm that we saw, and this is where 2 the old city dump was down in this area down in here. 3 You can see why it can't be seen from the 4 north looking south from that berm. This is not 5 very, you know, viewable, but it will give you a feel 6 for how much land mass was actually below these 7 tracks. 8 Q. Okay. So this is, obviously, before the lock 9 and dam? 10 A. Oh yeah. 11 Q. And where on this map is the lock and dam, 12 right here? 13 A. Yeah, Reed Mountain. 14 Q. Is that Gar Creek? 15 A. Yeah. 16 Q. That's Gar Creek? 17 A. Yeah. It would curve and come -- if this is 18 Gar Creek, then the lock and dam was -- 19 Q. Probably in the narrow -- 20 A. It's going be right down here. 21 Q. Yeah. 22 A. Yeah, there's that straight stretch of the 23 track, it's right in here. 24 Q. Okay. 25 A. But there was periods of time that you could
Page 94	Page 96
1 Q. Extension office? 2 A. No. It's the one out on 64 out here. 3 Anyway... 4 Q. Is it a state office or federal office? 5 A. Yeah, a state office. 6 Q. Okay. The best you can recall what is the name 7 of that agency? 8 A. That's what I was trying to remember. It used 9 to be Agricultural -- it's a federal facility, 10 Agricultural Stabilization Conservation something, 11 and I don't know, they have changed their name, so I 12 don't know what they're called now. 13 Q. Okay. 14 A. But, anyway, that's where this map came from, 15 and they have the original map out there. 16 Q. Okay. But it looks like it's a photograph? 17 A. This is a photograph of it, but the only reason 18 I kept it was to try to get some, some -- I don't 19 know whether I put a date on it or not, but it, it -- 20 it's to try to show the actual, how much land mass 21 was down there. And you can see where the building 22 here, where the F&S Lumber Company was. Right there 23 it is. 24 Q. Uh-huh. 25 A. You can see the rooftop of some of the houses,	1 actually -- I have waded this river before from one 2 bank to the other. 3 Q. Is that right? 4 A. Yeah. So these old sand bars moved around 5 quite a bit, but they would be west of here. I never 6 waded east of here, but down there I did. 7 Q. Okay. The next exhibit we will mark as Exhibit 8 140. 9 (Exhibit No. 140 was marked.) 10 BY MR. MCKAY: 11 Q. And is this another map that you obtained from 12 Union Pacific? 13 A. Yes. 14 Q. Okay. 15 A. And it is -- well, it may -- it's '78 so this 16 is going to be pretty much like the one we just, we 17 already looked at. 18 Q. Okay. 19 A. And it's interesting, you see when some of this 20 land was sold. 21 Q. Sold to Donald R. Hurst? 22 A. Donnie -- Duck Hurst is who it is. 23 Q. Okay. 24 A. His wife Bobbie Jean. 25 Q. Okay.

24 (Pages 93 to 96)

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1 **A. But doesn't, doesn't that say '67 right there?**
 2 **Q. I think it says '87.**
 3 **A. Eighty-seven?**
 4 **Q. Yes, sir.**
 5 **A. You can see how late some of this occurred.**
 6 **Q. Okay.**
 7 **A. That river was flooded in '72, so the railroad**
 8 **still owned land even after the -- they were selling**
 9 **land even after the river was flooded.**
 10 **Q. That one we just wrapped up was 140. The last,**
 11 **I won't say the last, the next exhibit -- the next**
 12 **exhibit we will mark as Exhibit 141.**
 13 **(Exhibit No. 141 was marked.)**
 14 **BY MR. MCKAY:**
 15 **Q. It is a four-page exhibit which appears to be**
 16 **overhead photographs, but I will ask, Mr. Gattis,**
 17 **where did he, where did you obtain these documents?**
 18 **A. The same agricultural office that I did the**
 19 **previous.**
 20 **Q. Okay. The federal agency you were talking**
 21 **about?**
 22 **A. Yes. The federal agency, and it's an ownership**
 23 **map. You can go by this and pick up the ownerships**
 24 **of the, of the farmable land anyway.**
 25 **Q. Okay.**

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1 **A. This is just basically a repeat of this -- if**
 2 **you notice, the difference in the river on this one,**
 3 **though. It was at a higher water level.**
 4 **Q. I see.**
 5 **A. Now looking at the second page, this is**
 6 **actually the lock and dam.**
 7 **Q. I see. Okay.**
 8 **A. And that, the shrunken land mass is what this**
 9 **was to try to depict.**
 10 **Q. When you say "the shrunken land mass," what are**
 11 **you talking about?**
 12 **A. The bridge, remember how the land mass went way**
 13 **on out into the river when it flooded?**
 14 **Q. I see.**
 15 **A. This is all of the remaining land mass. There**
 16 **is approximately three and a half acres down there.**
 17 **Q. This is all south of Ozark; correct?**
 18 **A. Yeah, this is, this is -- the depot is right**
 19 **here.**
 20 **Q. Oh, okay. I'm -- I understand.**
 21 **A. Okay.**
 22 **Q. I'm looking at --**
 23 **A. We're looking at it.**
 24 **Q. Yes, the other way.**
 25 **A. We are looking at it the reverse way.**

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1 **Q. Okay.**
 2 **A. We are looking from the north to the south.**
 3 **Q. Okay.**
 4 **A. And there is where we said the lock and dam**
 5 **was.**
 6 **Q. Okay. Now looking at the third page of this**
 7 **exhibit, just another overhead photograph?**
 8 **A. And this will be prior to the, prior to the**
 9 **lock and dam going in.**
 10 **Q. Okay.**
 11 **A. And back again, it's to show the land mass in**
 12 **comparison to what we just say here, which is this**
 13 **little-bitty, tiny three and a half acres. There**
 14 **used to be huge acreage down there.**
 15 **Q. Uh-huh.**
 16 **A. Ozark would not exist if it wasn't for the**
 17 **Arkansas River. This was the interstate highway of**
 18 **yesteryear, and everything that happened in this city**
 19 **in its early life revolved around the river.**
 20 **And that's what -- it just -- it's not only**
 21 **losing potential economic betterment for our**
 22 **community for the future, we're losing our heritage**
 23 **of a natural resource by not having access to it.**
 24 **Q. Okay. Looking at -- we have not talked about**
 25 **page three yet. This is one, two, three, four. Page**

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1 four, I guess, is the one. Do you know what the last
 2 page of this exhibit is?
 3 **A. It has no purpose.**
 4 **Q. Okay. It appears to be some sort of ownership**
 5 **map?**
 6 **A. It's an ownership map.**
 7 **Q. Soil Conservation Service?**
 8 **A. That's the name of the outfit.**
 9 **Q. Is that the one you were talking about?**
 10 **A. Yeah.**
 11 **Q. Okay. That's labeled on the last page. That's**
 12 **good because we'll have that now. Does this appear**
 13 **to relate to the river or the tracks at all?**
 14 **A. Not that I'm aware of.**
 15 **Q. Okay. All right.**
 16 **(Off-the-record discussion.)**
 17 **BY MR. MCKAY:**
 18 **Q. Back on the record.**
 19 **A. We are about to run out of things for me to**
 20 **present. Is that...**
 21 **Q. Okay. The next exhibit we will mark as Exhibit**
 22 **142.**
 23 **(Exhibit No. 142 was marked.)**
 24 **BY MR. MCKAY:**
 25 **Q. And I will let you tell me what that exhibit**

25 (Pages 97 to 100)

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1 is.
 2 **A. It's another copy of a map that was received**
 3 **from the Union Pacific map room in Omaha, Nebraska.**
 4 **And this is the best copy I could get of it, but I**
 5 **have this -- here again, it was done in 1946 as the**
 6 **other maps were. But without expanding it from the**
 7 **digital, I can't tell you, I can't read what's on**
 8 **there.**
 9 Q. Okay. Let me ask you this. So Exhibit 142,
 10 this is -- is this a separate map than one of the
 11 ones we've previously marked?
 12 **A. It's a separate map, but it may or may not**
 13 **have -- well, I know it has some of the same**
 14 **information. Whether it has additional information,**
 15 **I can't answer that.**
 16 Q. Okay. Was it sent to you in an electronic
 17 format?
 18 **A. Yes.**
 19 Q. From Union Pacific?
 20 **A. Yes.**
 21 Q. Can we also request that you send that
 22 electronic file to Mr. Brockett?
 23 **A. Yes.**
 24 Q. So we can obtain it from him?
 25 **A. Yes.**

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1 Q. And that's true for any of these electronic
 2 exhibits?
 3 **A. Okay.**
 4 Q. Okay. The next document we will label as
 5 Exhibit 143.
 6 (Exhibit No. 143 was marked.)
 7 **A. That's all that I have.**
 8 Q. Is that -- that's a duplicate over there?
 9 **A. That's a duplicate.**
 10 Q. Okay.
 11 **A. And that's just merely something that I was**
 12 **curious about when the railroad depot was built, and**
 13 **I looked it up on the internet and, to find out when**
 14 **it was built.**
 15 Q. Okay. And that was -- we will label that as
 16 Exhibit 143, the document you were just referring to,
 17 and that's an email that you sent to Mr. Brockett and
 18 Ms. Key concerning these issues?
 19 **A. Historical information.**
 20 Q. Okay. All right. Are there any other
 21 documents that you brought with you that are
 22 responsive to Exhibit A and the Notice of Deposition?
 23 **A. No.**
 24 Q. Okay.
 25 MR. MCKAY: Why don't we take a quick

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1 break and let me get organized? I will
 2 have a series of questions to go through,
 3 and we will get you out of here as soon as
 4 we can.
 5 (Five-minute break.)
 6 BY MR. MCKAY:
 7 Q. We are back on the record. We've talked a lot,
 8 and you have shown us a lot of documents and given us
 9 information concerning the use of the crossing at
 10 various times.
 11 Are you familiar with around the time
 12 period, like beginning in 2000, do you have any
 13 personal knowledge of how the crossing was used at
 14 that period of time?
 15 **A. In what year now?**
 16 Q. Around 2000, 2001? Other than I understand the
 17 propane tanks were over on the south side of the
 18 tracks, so it was being used to access the propane
 19 facility --
 20 **A. Uh-huh.**
 21 Q. -- were there any -- are you aware -- I'm
 22 sorry. You have to answer out loud.
 23 **A. Well, I'm still listening to you.**
 24 Q. Yeah.
 25 **A. Yes.**

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1 Q. Let me back up and make sure we have a clear
 2 record.
 3 **A. All right.**
 4 Q. In the early 2000's there were, the propane
 5 tanks that were sitting south of the railroad tracks;
 6 correct? You have to answer out loud.
 7 **A. Okay. I'm still waiting for the finish. Yes,**
 8 **I understand.**
 9 Q. I am trying to break it down so I don't get too
 10 confused. And the crossing was being used,
 11 obviously, by the propane company to access the tanks
 12 in the late nineties, early 2000's; correct?
 13 **A. Yes.**
 14 Q. Okay. During that period of time do you know
 15 if the crossing was being used for any other purpose?
 16 **A. To my knowledge, recreational things. People**
 17 **would go down to shoot. They would be -- there was**
 18 **people that would put flat bottom boats in down there**
 19 **because there wasn't really any access to the river.**
 20 Q. I'm talking about after the, after the area was
 21 flooded. I mean, people would still shoot around the
 22 area where the propane tanks were?
 23 **A. That's what I'm told.**
 24 Q. So that's based on what someone told you?
 25 **A. No, not around the propane tanks, but I'm**

26 (Pages 101 to 104)

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1 talking about down off the end of, down off the end 2 of that land mass down there. 3 Q. East of the propane tanks? 4 A. Yes. 5 Q. Or west? 6 A. Near Gar Creek. 7 Q. Okay. 8 A. Where Gar Creek comes in, the very end of it 9 down there. 10 Q. Okay. 11 A. And that's, that's -- here again, what I'm 12 told. 13 Q. Okay. That's based on what you someone told 14 you? 15 A. Hearsay. 16 Q. Okay. All right. Besides what people have 17 told you, do you have any personal knowledge about 18 how that area was used after the lock and dam was 19 installed and the river was flooded? 20 A. No. Just that people could go back and forth 21 and still go down that, what would be called Oliver 22 Street, the dirt road or the gravel road that led 23 down through there. It was still accessible. That 24 wasn't all grown up then as you see it now. 25 Q. Okay. And that's based on what others have	1 A. It went past where the propane tanks were. You 2 could drive practically all of the way to the end of 3 that land mass. 4 Q. Okay. Which would be down close to Gar Creek? 5 A. Gar Creek. 6 Q. When is the first time you actually heard this 7 street referred to as Oliver Street, based on your 8 own personal knowledge? 9 A. After the railroad took it out and we started 10 trying to find out when it was going back in, because 11 there had been work done to try to get a walking 12 trail down there prior to it starting in the 2000's, 13 as a matter of fact. 14 And then there, after it wasn't put back, 15 and it wasn't put back, that's when I became involved 16 in it through my contacts downtown, because they were 17 saying, you know, we need to -- we are going to have 18 to do something, and that's when the negotiations 19 started. I wasn't involved in any of the 20 negotiations -- 21 Q. Okay. 22 A. -- ever, and/or at the beginning of it. 23 Q. Okay. Back when you were growing up what -- 24 was there a name for that street? Did y'all call it 25 anything?
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1 informed you of? 2 A. I have been across it down there during that 3 period of time. 4 Q. Okay. When is the last time that you went 5 across the tracks there at the crossing? 6 A. Two thousands, summer of 2000. 7 Q. Okay. And what was your reason for going over 8 the crossing? 9 A. Just to go down and look at it. 10 Q. All right. Any other -- do you have any other 11 information concerning the historical use of that 12 crossing either before or after the lock and dam was 13 installed, other than what we've talked about here 14 today? 15 A. Say that again, the beginning. 16 Q. Yes, sir. Do you have any other information 17 concerning how the crossing was used either before or 18 after the lock and dam was installed, other than what 19 we've discussed here today? 20 A. No. 21 Q. After the lock and dam was installed did Oliver 22 Street dead end at the propane facility, or did it go 23 past the propane facility? 24 A. Prior to 2001? 25 Q. Yes, sir.	1 A. No, there wasn't -- no, to answer that 2 question. 3 Q. Okay. 4 A. But there wasn't names for many of the streets 5 in the, in the town at that point in time. There was 6 no street signs. 7 Most of these street signs only came up 8 after 911. People just said they live on the other 9 side of the Jones's, or whatever, you know. 10 Q. And you said that the crossing when it was 11 there was asphalted in between the railroad tracks? 12 A. As I remember it, yes. 13 Q. Okay. 14 A. As the photographs show, yes. 15 Q. Okay. And then was there -- as you go over the 16 crossing on the south side, was the road asphalt, or 17 was it a dirt road? 18 A. It was asphalted for a short distance, as I 19 recall. 20 Q. Do you know how far it was? 21 A. No. 22 Q. Okay. 23 A. Well, practically to where you made the turn to 24 go to the east. 25 Q. Where you would make the turn now to go to the

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1 east or back before the lock and dam was installed?

2 **A. Either one.**

3 Q. It would be the same?

4 **A. Yeah.**

5 Q. Okay. What about from River Street to the

6 railroad tracks, do you ever recall that area being

7 asphalted, or was that gravel?

8 **A. It was asphalted. In fact, there's still**

9 **remnants of the asphalt down there.**

10 Q. Okay. Do you know if it was asphalted more

11 than 50 feet away from the tracks?

12 **A. I couldn't answer that specifically, no.**

13 Q. Okay. Okay. I think you have answered this,

14 but you were not involved in any negotiations or

15 discussions to try to reinstall the crossing;

16 correct?

17 **A. With whom?**

18 Q. Well, with the railroad?

19 **A. No.**

20 Q. Okay. Have you ever served on the city

21 council?

22 **A. No.**

23 Q. Do you ever want to serve on the city council?

24 **A. No.**

25 Q. That was an emphatic "no." Do you ever -- have

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1 you attended city council meetings at any time?

2 **A. Yes.**

3 Q. When is the first, ballpark, year that you

4 first attended a city council meeting?

5 **A. 1990.**

6 Q. Okay.

7 **A. 1988, and I'm having to step back to think**

8 **about it, 1987, during that '87 or '88 period.**

9 Q. Is that when you were in the real estate

10 business, and you were trying to develop or rezone

11 property, that type of thing?

12 **A. Yeah, trying to get a street closed.**

13 Q. Okay. Had you ever been at a city council

14 meeting -- let's talk about the time before the

15 crossing was removed; okay?

16 Before the crossing was removed had you

17 ever been at a city council meeting where the

18 crossing was discussed?

19 **A. No, not to my knowledge.**

20 Q. Okay.

21 **A. And I attended a lot of city council meetings**

22 **during that time.**

23 Q. Okay. Before the crossing was removed did you

24 ever attend a city council meeting where the depot

25 was discussed?

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1 **A. Yes.**

2 Q. Okay. And do you recall what was discussed?

3 **A. No. The only thing I remember it was of no**

4 **importance to me then. I just remember it being**

5 **discussed.**

6 Q. Okay.

7 **A. It was just one of those passed by, no interest**

8 **things.**

9 Q. Okay. After the crossing was removed have you

10 attended city council meetings where the crossing was

11 discussed?

12 **A. Yes.**

13 Q. Have you attended any city council meetings

14 where the crossing was discussed and anyone from

15 Union Pacific was present?

16 **A. Yes.**

17 Q. Okay. And how many times did that occur?

18 **A. The one time that I've mentioned earlier in the**

19 **deposition, and if it's -- if it was the crossing**

20 **just being mentioned at a recent time when Union**

21 **Pacific public relations representative was here, and**

22 **one of the council people asked him when they were**

23 **going to replace our crossing.**

24 Q. And that was a meeting just a couple of weeks

25 ago?

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1 **A. Just a couple of weeks ago.**

2 Q. Okay. All right. Who asked him the question

3 about replacing the crossing; do you recall?

4 **A. Alderman Harvey Waters.**

5 Q. Okay. Did you ever attend a city council

6 meeting at any time where an issue was discussed that

7 people were complaining about whistles being blown,

8 train whistles being blown near downtown Ozark?

9 **A. You know, no. I don't.**

10 Q. Okay. You said earlier you had attended a lot

11 of city council meetings. Would you attend those --

12 I mean, would you attend half of them in a given

13 year, or more than half, or less than half, or how

14 would you describe your attendance at city council

15 meetings?

16 **A. Some years based on what was being done at the**

17 **time, practically every meeting that went on during**

18 **the year, and I can go back now for several years.**

19 Q. So what years would that have been when you

20 attended practically every meeting?

21 **A. For about, probably about 2000 or 2001 on.**

22 Q. Okay. Do you ever remember a meeting where

23 Mayor Timmerman said that he had gotten the letter

24 from the railroad concerning closing the crossing in

25 exchange for the depot?

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1 **A. Absolutely not.**
 2 Q. Do you recall when the, and I'm asking this
 3 question based on your own personal knowledge, not
 4 based on research that you've done, but do you have
 5 an independent recollection of when the crossing was
 6 actually removed?
 7 **A. That I would personally say I know that this**
 8 **date is when the crossing was removed?**
 9 Q. Yes, sir. Or do you remember the, when it was
 10 removed, do you remember knowing that it had been
 11 removed?
 12 **A. I was told that it had been removed and went**
 13 **down and looked myself, you know.**
 14 Q. Okay. And would that have been around the time
 15 it was removed?
 16 **A. February or March of that -- well, no, because**
 17 **we are -- it would have been later than that because**
 18 **we were expecting it to be put back.**
 19 **So it would have been -- we knew it was**
 20 **removed. You go to the post office down there. You**
 21 **know, you can see what's going on, so. I can't give**
 22 **a specific date that I knew that.**
 23 Q. Okay.
 24 **A. But in that general time.**
 25 Q. And what timeframe is that?

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1 **A. Well, after it was, just shortly after it was**
 2 **removed.**
 3 Q. Are we talking about within a month, within a
 4 few months, you think, within a couple of years?
 5 **A. I watched them as they were removing, they were**
 6 **putting new crossties down, a new rail system in, as**
 7 **I was told now.**
 8 **I know they were putting new crossties**
 9 **down. It was kind of amazing with the machines they**
 10 **were using to do it.**
 11 Q. Okay.
 12 **A. And that was in the February period of time.**
 13 Q. Okay.
 14 **A. That's when the Oliver Street was removed.**
 15 Q. I understand.
 16 **A. So that's what brings it to mind.**
 17 Q. So you actually saw them do the work to remove
 18 the crossing?
 19 **A. Some of the work, yes.**
 20 Q. Got it. Okay. Did you at any time voice an
 21 opinion to anyone that the crossing should not be
 22 removed?
 23 **A. Not at that point in time, no.**
 24 Q. Okay. When was the first time that you voiced
 25 an opinion about the crossing being removed?

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1 **A. When we started finding out that it wasn't**
 2 **going to be replaced, and Union Pacific was, was**
 3 **telling the Main Street director that there had to be**
 4 **a, had to be applied for a new crossing to be put in**
 5 **and all of the difficulty she was, she was**
 6 **experiencing at that point in time.**
 7 Q. Okay. And would that have been just in the
 8 last couple of years?
 9 **A. No. It's prior to that. The negotiations have**
 10 **been going on with the railroad with -- you know, I'm**
 11 **speaking for a -- I'm going to guess five or six**
 12 **years there or longer, I don't know.**
 13 Q. Okay.
 14 **A. I wasn't involved in any of that.**
 15 Q. Fair enough. So you couldn't --
 16 **A. Yeah.**
 17 Q. Okay. As far as when the city started talking
 18 to the railroad about reinstalling a crossing, you
 19 don't have any personal knowledge about that time
 20 period?
 21 **A. I wasn't involved in it at that point in time.**
 22 Q. All right. When you saw it being removed did
 23 you think anything about it at that time as far as
 24 whether or not it should or should not have been
 25 removed?

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1 **A. It didn't cross my mind.**
 2 Q. Okay. And just to confirm, you were not
 3 involved in the transaction involving the depot and
 4 the city at all?
 5 **A. No.**
 6 Q. Now, have you ever served on the board of Main
 7 Street Ozark?
 8 **A. No.**
 9 Q. Okay. Have you -- do you have any kind of
 10 affiliation with Main Street Ozark?
 11 **A. I have assisted in economic development of the**
 12 **downtown area.**
 13 Q. Okay.
 14 **A. Which they have -- it is their responsibility.**
 15 Q. And what -- on a volunteer basis?
 16 **A. Yes.**
 17 Q. You have not been compensated by Main Street
 18 Ozark?
 19 **A. Zero.**
 20 Q. And what is the assistance that you have
 21 provided as to economic development?
 22 **A. Experience, time spent to visit with people, to**
 23 **do research, to do studies, to make recommendations.**
 24 Q. Do you -- is there any formal input group that
 25 you're a member of that tries to give information or

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1 advice to Main Street Ozark, or is it just based on 2 your experience, you're just trying to give input on 3 your own? 4 A. Just on my own. I'm just a volunteer. 5 Q. Okay. 6 A. And that's on, on request. You know, if I'm 7 needed then I'm there. 8 Q. In your real estate experience have you ever 9 been involved in developing a downtown district? 10 A. Not physically involved in it, no. 11 Q. Okay. Have you had some association with it 12 before Main Street Ozark? 13 A. Yes. 14 Q. Okay. Tell me about that. 15 A. Well, a minor degree. In Arvada, Colorado when 16 they were having difficulty with their -- not 17 expanding, they were trying to control or restrict 18 downtown, forcing downtown businesses to go into the 19 downtown area instead of allowing them to go out onto 20 the arterials. 21 And we voiced, as realtors voiced our 22 strong opposition to their island mentality, of -- 23 which it failed them, of course, and now it's on the 24 arterials, but... 25 Q. In which city are you talking about?	1 railroad? 2 A. I have sold property beside a railroad. 3 Q. Okay. But no transaction involving the 4 railroad? 5 A. No. 6 Q. Okay. 7 THE WITNESS: Let's go off the record 8 a minute. 9 MR. MCKAY: Okay. 10 (Off-the-record discussion.) 11 BY MR. MCKAY: 12 Q. Do you have any experience or knowledge of what 13 causes a train to derail? 14 A. What I have read, the research I have done on 15 it, so I would say I have some knowledge, but it's, 16 it's through reading about it. 17 Q. Okay. And what have you read about that? 18 A. The rock and rolling of the thing, the -- the 19 distance that it takes to stop, the -- there's a -- 20 the coupling, the -- there's another term, and I 21 can't think what the term is right now, where it's 22 loaded that, the cars are loaded too much to the top, 23 and it causes a rock and rolling motion. 24 Q. Okay. 25 A. And speed.
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1 A. Arvada, Colorado. 2 Q. What? 3 A. Arvada. 4 Q. Arvada? 5 A. Uh-huh. 6 Q. Okay. All right. Have you been involved in 7 any request or applications for grants or money for 8 development in Ozark? 9 A. Just to help with some narrative on it. 10 Q. Okay. Do you remember which application that 11 was, to what entity? 12 A. No. There's various ones. 13 Q. And you've never worked for a railroad; 14 correct? 15 A. No. 16 Q. You hesitated, so I have got to ask why. Were 17 you just surprised at the question? 18 A. Yes. 19 Q. Or should I be asking another question relating 20 to railroad employment? 21 A. I have ridden on the railroad before. 22 Q. Okay. Have you ever done any consulting for a 23 railroad? 24 A. No. 25 Q. Okay. You've never sold property for or to a	1 Q. Okay. 2 A. And there's -- that's probably about it. 3 Q. Okay. 4 A. As far as the... 5 Q. And what was the source of that; was that doing 6 research on the internet? 7 A. Yes, research on the internet. 8 Q. Do you know what the materials were that you 9 were reading? 10 A. Oh, some of it was from the FRA. There is 11 information on there. These -- in fact, there was 12 another train wreck today. I believe there was 51 13 cars involved in it, a commuter train. 14 But there was one, just oil tankers just a 15 few days ago. And I try to read those to find out 16 what has caused them, what might have caused them, 17 and just to -- we're living in a, you know, in an 18 area right here that, you know, not only oil passes 19 through, flammables and all this sort of thing, that 20 it kind of puts the city potentially at danger and 21 hazard should there be an accident down there. 22 So anything that we can do as citizens to 23 help try to prevent something like that from 24 happening we want to do. 25 We need to educate ourselves, just as well

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1 as the railroad needs to do their job, and that's
 2 what the need for communication is, just to have some
 3 kind of safety program.
 4 I have even talked to the sheriff about
 5 that and a couple of others in town, about if we had
 6 an accident down there how would we evacuate.
 7 These are things that we have to give
 8 consideration to. And it's not pointing a finger or
 9 blame at the railroad, it's just something that needs
 10 to be considered.
 11 Q. I guess the point I'm trying to make is you
 12 don't consider yourself an expert in determining the
 13 cause of the derailment or the hazards of railroading
 14 as it relates to accidents and that type of thing?
 15 A. No.
 16 Q. Okay. And you don't consider yourself an
 17 expert in terms of railroad operations; do you?
 18 A. No.
 19 Q. Okay.
 20 A. Define "expert" for me.
 21 Q. Well, someone who would be qualified to come
 22 into a courtroom to talk about, you know, the
 23 specific factors that a railroad looks at when it's
 24 hauling freight.
 25 I mean, from grade of rail, to weight, to

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1 slack actions, to couplers, to breaking, I mean all
 2 of the, all of the factors that go into the decisions
 3 on how to operate a railroad.
 4 A. No.
 5 Q. Okay. And, again, just to make sure we have a
 6 clear record, the railroad has asked the city to
 7 produce certain witnesses to talk about certain
 8 subjects.
 9 I think we have gone over everything that
 10 was within your particular area, but I wanted to make
 11 sure.
 12 You were identified as one of the people to
 13 speak on behalf of the city as the identification of
 14 the previous location of Oliver Street and the
 15 history of its use.
 16 Besides what we've talked about, do you
 17 have any other information that relates to the
 18 previous location of Oliver Street and the history of
 19 its use?
 20 A. Not that I recall right now.
 21 Q. Okay. And then you were also designated as --
 22 we were asking to talk to someone about the existence
 23 of a recorded plan or plat purporting to dedicate
 24 Oliver Street for public use, and in response -- let
 25 me just let you read this.

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1 This is from Mr. Brockett. It says, The
 2 original city plat is believed to have been lost
 3 during the Civil War, and no plat of the original
 4 downtown area of Ozark has ever been recreated when
 5 the Plaintiff was reincorporated; however, Royce
 6 Gattis believes he saw a copy of a plat in 1988, but
 7 it has not been obtained by Plaintiff's
 8 representatives.
 9 Do you know what plat is being referred to
 10 here?
 11 A. I do.
 12 Q. Okay. Tell me what, what plat is it. Where
 13 did you see it? What did it have on it?
 14 A. Well, it was what was being presented as the
 15 original plat of Ozark, and during this period of
 16 time is -- let me bring it up to why we were even
 17 searching for it.
 18 Q. Okay.
 19 A. We were in the process, some of the city
 20 streets are not built, were not put in where the city
 21 plat said they are supposed to be put in.
 22 Now there is encroachments of city street
 23 on private property, and we were -- I had bought
 24 property west of here on 17th Street, which at that
 25 point in time was called Cedar Street.

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1 So the names of the streets have changed in
 2 Ozark down through time when 911 came in. The
 3 property I had when the survey came back said that
 4 the street was supposed to be on the property when,
 5 in fact, it was, it was, it was on the property and
 6 was supposed to be further over.
 7 So we had to go in and -- "we," being the
 8 attorney I was using at that time -- and get a street
 9 closure and get it identified where that street
 10 actually was, you know, was in place.
 11 And there was, incidentally, some people at
 12 City Hall thinking that I was trying to close a city
 13 street. Well, legally, technically, yes, it's
 14 closing it, but no, it wasn't being physically
 15 closed.
 16 Q. Right.
 17 A. And that's where we were digging around trying
 18 to find these old plats, and the attorney and I, at
 19 that point in time I believe what we had was the
 20 original plat of Ozark.
 21 Q. Okay.
 22 A. And I saw it -- and I have talked to him
 23 recently, and he is ill. I mean, he has a serious
 24 physical difficulty right now, but the, he remembers,
 25 you know, seeing the same thing as his memory goes.

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1 Q. Okay. And that, when you saw the plat would
2 have been in 1988?
3 A. Yeah, well '87 or '88.
4 Q. Okay.
5 A. The reason I know this is because that's when I
6 had bought the property and was building the laundry.
7 Q. Okay. And where was the property that you were
8 concerned about? Physically where was the property
9 located on the land that you were having to deal with
10 as related to the plat? That's a bad question. The
11 property that you were dealing with dealt with the
12 laundry mat?
13 A. Yes.
14 Q. Okay. Where was the laundry mat physically
15 located?
16 A. On 17th Street.
17 Q. Near what other streets?
18 A. Between, I believe it's School Street and, and
19 Commercial, which is Highway 64.
20 Q. Okay. And where were you when you saw what you
21 thought was the original city plat?
22 A. That's what, that's what he and I have
23 discussed, and we're nearly positive that it was, and
24 key word "nearly," now.
25 Q. Okay.

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1 A. Nearly positive that it was at Adams Abstract.
2 Q. Okay.
3 A. And that's, of course, back before the title
4 policies and all of this sort of thing where they
5 were actually using abstracts, and there was actually
6 historical information being brought forward.
7 Q. So did -- why is it that you thought you were
8 looking at the original plat to the city?
9 A. Well, just because of how it was laid out and
10 the, the -- where we look at some of the downtown
11 blocks now there is no, there is no alleyway in the
12 center.
13 And back at that point in time every street
14 there would be an alleyway before the next street,
15 and how the original, the original plat was laid out.
16 Q. Okay.
17 A. So you had a street, alleyway, street. Either
18 you're going east and west, or north and south. It
19 was street, alleyway, street, street, alleyway,
20 street.
21 Q. Okay. Do you recall if there was a date listed
22 on the plat?
23 A. No. I wished, wished I did. No, I don't.
24 Q. Okay. All right. Besides the property on 17th
25 Street in the vicinity of the laundry mat property

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1 that you were dealing with, do you remember anything
2 else about the plat as far as where streets were laid
3 out?
4 A. Well, that -- that wasn't -- after we
5 finally -- we were doing what we were doing on 17th
6 Street -- he is kind of a history buff also -- and
7 our interest was looking at the old downtown and how
8 it was originally laid out.
9 And as I recall now, it only went to -- Gar
10 Creek runs north and south, and then it curves back
11 and goes practically due west.
12 Well, the original old plat was just
13 incorporated basically in the downtown area. I mean,
14 we had residential property started at Third Street,
15 which is, what, two, you know, one block off of the
16 square practically, so.
17 Q. Okay.
18 A. Well, I say 3rd Street, 4th Street. I'm sorry,
19 4th Street as you are going west.
20 Q. Okay. On this plat that you are looking at, do
21 you have any recollection of whether there was a
22 crossing downtown or whether Oliver Street existed on
23 the plat or anything related to the issues in this
24 lawsuit?
25 A. It showed -- as I recall, it showed the Oliver

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1 Street, and whether it was at Oliver Street, I can't
2 tell you whether it had a name on it or not.
3 It showed a crossing there. It showed a
4 crossing at, actually at Bell Street then, just
5 nearly directly across from Bell.
6 It showed the, two crossings going, one by
7 where the old jail is now, which will be 2nd Street,
8 and then on up to 4th Street, which was angled and
9 ran down into where the ferry was.
10 That's the one that went under or directly
11 west towards where -- the river bridge, of course,
12 didn't exist back then, but it went to all of that
13 land mass.
14 As I recall the thing, there was three
15 access roads, so to speak, to that land mass on the
16 other side of that, you know, where the tracks are
17 now.
18 Q. Yeah.
19 A. The railroad come in here in 1870 something, so
20 there's been a discussion whether this thing was lost
21 in the Civil War or during the Civil War and redone
22 later on off of a copy or off of somebody's memory.
23 It's an unknown in that aspect. We just
24 feel that we saw what would be considered the
25 original plat, so.

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1 Q. Okay. What -- you know, if you were concerned
2 about a property on 17th Street, what was it about
3 that situation that made you take note of where
4 crossings were on the railroad track?
5 **A. Just historical, just historical excitement**
6 **really as to see how important that river was, you**
7 **know, way back then. It's always interested me of**
8 **the history of it. I collect old maps.**
9 Q. Okay. Do you know if -- well, let me strike
10 that. Did you look at that map more than once, or
11 did you see it only one occasion?
12 **A. I can only remember it one time.**
13 Q. Okay. Do you know if it was a map or if it was
14 actually a plat that was filed somewhere?
15 **A. I recall it as a, as a plat, you know, as a**
16 **plat. Now whether it's -- that's just my**
17 **recollection.**
18 Q. Okay.
19 **A. And I still believe that it's at Adams Abstract**
20 **office.**
21 Q. Have you been by to try to talk to them?
22 **A. Yes.**
23 Q. Okay. What do they say about it?
24 **A. Well, they haven't been able to locate it, to**
25 **my knowledge, so.**

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1 Q. Okay. And who was the, the other gentleman you
2 were with that saw the document?
3 **A. Greg McKinsey (phonetic).**
4 Q. Is he a retired lawyer, did you say?
5 **A. Yes.**
6 Q. Okay. Does he still practice?
7 **A. No. He has been retired for maybe 12 or 15**
8 **years now.**
9 Q. Does he still live around here?
10 **A. He does.**
11 Q. Did you say he is not in good health?
12 **A. He is not in good health and shouldn't be**
13 **bothered.**
14 Q. Do you know if he is in a retirement facility,
15 or does he live at home?
16 **A. He's at home now.**
17 Q. Okay. Let me go through my list here; okay? I
18 think we have covered most of these, but let me just
19 make sure.
20 You said the original or there's been talk
21 that some of the original documents were destroyed in
22 the Civil War. Who told you that, or what's the
23 source of that statement?
24 **A. Oh, it's multiple sources. They -- my history**
25 **teacher -- I'm having one of those senior moments for**

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1 **his name right now -- Norman Powell, you know,**
2 **supposedly that's the source that it came from.**
3 **That's what I'm told, but it's just been**
4 **something that was repeated down through time, that**
5 **it was lost during the Civil War.**
6 **The courthouse was supposedly burned during**
7 **the Civil War, and most of the structures in town**
8 **were burned during the Civil War.**
9 **I have never seen any proof of that. Of**
10 **course, I wasn't around at that point in time, but**
11 **that's the story, yeah.**
12 Q. Okay. Have you had any discussions with anyone
13 at the Corps of Engineers concerning the railroad
14 crossing or development of the area downtown?
15 **A. Personally, no.**
16 Q. Okay. The answers to these questions are
17 probably no, but I'm asking everyone just to make
18 sure that no one has any specific recollection of
19 this.
20 In your research have you seen any document
21 that actually shows Oliver Street was dedicated as a
22 city street?
23 **A. No.**
24 Q. Have you seen any documents that show that the
25 crossing was ever dedicated as a city crossing?

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1 **A. No.**
2 Q. Have you seen any documents that shows the city
3 accepted Oliver Street as a public street?
4 **A. No. Can I comment on that now?**
5 Q. Yes, sir.
6 **A. One would be hard pressed to find any other**
7 **street in this town that would meet those particular**
8 **criteria.**
9 Q. Okay. The map or plat that you saw at Adams
10 Abstract, did it have any kind of file mark on it
11 indicating that it was filed as a matter of record
12 anywhere?
13 **A. No. And that's another thing that Greg and I**
14 **have discussed. He, he says that it has to be -- you**
15 **know, it should be at the courthouse, filed at the**
16 **courthouse.**
17 **And I have gone and spent a considerable**
18 **amount of time down there attempting to find that and**
19 **haven't. I haven't found it at the courthouse.**
20 Q. Haven't found any record of a recording of
21 that?
22 **A. No.**
23 Q. Okay. In your research have you come across
24 any ordinance that accepts Oliver Street as being
25 dedicated for public use? Let me back up. Have you

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Page 133 1 researched any city ordinances concerning the Oliver 2 Street crossing? 3 A. Yes. 4 Q. Have you found any city ordinances that relate 5 to it? 6 A. Only that would be through implication saying 7 that the, you know, that they had leased the property 8 for the city dump, and there had to be access to the 9 city dump was Oliver Street, so. 10 Q. So there was a city ordinance where the city 11 approved leasing the property from? 12 A. Mrs. Oliver, Ms. Oliver. 13 Q. Okay. Was that any of the documents that we 14 looked at today? Did you bring that document with 15 you? 16 A. Help me with what you're -- you mean the 17 ordinance? 18 Q. Yes, sir. 19 A. No, no. 20 Q. Okay. Do you have a copy of that ordinance? 21 A. Personally, no. 22 Q. Okay. Do you own any property in downtown 23 Ozark now? 24 A. No. 25 Q. Do you own any real estate in the Ozark area?	Page 135 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS) 3)ss. 4 COUNTY OF SALINE) 5 I, JANESE FERGUSON SMITH, CCR, RPR, a 6 Notary Public in and for Saline County, Arkansas do 7 hereby certify that the facts stated by me in the 8 caption of the foregoing matter are true; and that 9 the foregoing matter was transcribed by me, to the 10 best of my ability and understanding, from my machine 11 shorthand notes taken at the time and place set out 12 in the caption hereto. 13 In accordance with Rule 30(e) of the 14 Rules of Civil Procedure, review of the transcript 15 was waived by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither 17 counsel for, related to, nor employed by any of the 18 parties to the action in which this proceeding was 19 taken; and, further that I am not a relative or 20 employee of any attorney or counsel employed by the 21 parties hereto, not financially interested or 22 otherwise, in the outcome of this action. 23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 24 this, the 24th day of February, 2015. 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000
Page 134 1 A. In the Ozark area? 2 Q. Yes, sir. 3 A. Yes. 4 Q. I presume you own your residence? 5 A. Yes. 6 Q. Any besides your residence? 7 A. No. 8 Q. Okay. Do you have an interest in any 9 commercial properties or potential commercial 10 properties in Ozark? 11 A. No. 12 MR. MCKAY: Those are all the 13 questions I have. Thank you for your time. 14 THE WITNESS: Thank you. 15 MR. BROCKETT: I don't have anything. 16 (The deposition was concluded at 4:35 p.m.) 17 18 19 20 21 22 23 24 25	

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1 Q. Okay. What -- you know, if you were concerned
2 about a property on 17th Street, what was it about
3 that situation that made you take note of where
4 crossings were on the railroad track?
5 **A. Just historical, just historical excitement**
6 **really as to see how important that river was, you**
7 **know, way back then. It's always interested me of**
8 **the history of it. I collect old maps.**
9 Q. Okay. Do you know if -- well, let me strike
10 that. Did you look at that map more than once, or
11 did you see it only one occasion?
12 **A. I can only remember it one time.**
13 Q. Okay. Do you know if it was a map or if it was
14 actually a plat that was filed somewhere?
15 **A. I recall it as a, as a plat, you know, as a**
16 **plat. Now whether it's -- that's just my**
17 **recollection.**
18 Q. Okay.
19 **A. And I still believe that it's at Adams Abstract**
20 **office.**
21 Q. Have you been by to try to talk to them?
22 **A. Yes.**
23 Q. Okay. What do they say about it?
24 **A. Well, they haven't been able to locate it, to**
25 **my knowledge, so.**

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1 Q. Okay. And who was the, the other gentleman you
2 were with that saw the document?
3 **A. Greg McKinsey (phonetic).**
4 Q. Is he a retired lawyer, did you say?
5 **A. Yes.**
6 Q. Okay. Does he still practice?
7 **A. No. He has been retired for maybe 12 or 15**
8 **years now.**
9 Q. Does he still live around here?
10 **A. He does.**
11 Q. Did you say he is not in good health?
12 **A. He is not in good health and shouldn't be**
13 **bothered.**
14 Q. Do you know if he is in a retirement facility,
15 or does he live at home?
16 **A. He's at home now.**
17 Q. Okay. Let me go through my list here; okay? I
18 think we have covered most of these, but let me just
19 make sure.
20 You said the original or there's been talk
21 that some of the original documents were destroyed in
22 the Civil War. Who told you that, or what's the
23 source of that statement?
24 **A. Oh, it's multiple sources. They -- my history**
25 **teacher -- I'm having one of those senior moments for**

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1 **his name right now -- Norman Powell, you know,**
2 **supposedly that's the source that it came from.**
3 **That's what I'm told, but it's just been**
4 **something that was repeated down through time, that**
5 **it was lost during the Civil War.**
6 **The courthouse was supposedly burned during**
7 **the Civil War, and most of the structures in town**
8 **were burned during the Civil War.**
9 **I have never seen any proof of that. Of**
10 **course, I wasn't around at that point in time, but**
11 **that's the story, yeah.**
12 Q. Okay. Have you had any discussions with anyone
13 at the Corps of Engineers concerning the railroad
14 crossing or development of the area downtown?
15 **A. Personally, no.**
16 Q. Okay. The answers to these questions are
17 probably no, but I'm asking everyone just to make
18 sure that no one has any specific recollection of
19 this.
20 In your research have you seen any document
21 that actually shows Oliver Street was dedicated as a
22 city street?
23 **A. No.**
24 Q. Have you seen any documents that show that the
25 crossing was ever dedicated as a city crossing?

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1 **A. No.**
2 Q. Have you seen any documents that shows the city
3 accepted Oliver Street as a public street?
4 **A. No. Can I comment on that now?**
5 Q. Yes, sir.
6 **A. One would be hard pressed to find any other**
7 **street in this town that would meet those particular**
8 **criteria.**
9 Q. Okay. The map or plat that you saw at Adams
10 Abstract, did it have any kind of file mark on it
11 indicating that it was filed as a matter of record
12 anywhere?
13 **A. No. And that's another thing that Greg and I**
14 **have discussed. He, he says that it has to be -- you**
15 **know, it should be at the courthouse, filed at the**
16 **courthouse.**
17 **And I have gone and spent a considerable**
18 **amount of time down there attempting to find that and**
19 **haven't. I haven't found it at the courthouse.**
20 Q. Haven't found any record of a recording of
21 that?
22 **A. No.**
23 Q. Okay. In your research have you come across
24 any ordinance that accepts Oliver Street as being
25 dedicated for public use? Let me back up. Have you

33 (Pages 129 to 132)

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Page 133 1 researched any city ordinances concerning the Oliver 2 Street crossing? 3 A. Yes. 4 Q. Have you found any city ordinances that relate 5 to it? 6 A. Only that would be through implication saying 7 that the, you know, that they had leased the property 8 for the city dump, and there had to be access to the 9 city dump was Oliver Street, so. 10 Q. So there was a city ordinance where the city 11 approved leasing the property from? 12 A. Mrs. Oliver, Ms. Oliver. 13 Q. Okay. Was that any of the documents that we 14 looked at today? Did you bring that document with 15 you? 16 A. Help me with what you're -- you mean the 17 ordinance? 18 Q. Yes, sir. 19 A. No, no. 20 Q. Okay. Do you have a copy of that ordinance? 21 A. Personally, no. 22 Q. Okay. Do you own any property in downtown 23 Ozark now? 24 A. No. 25 Q. Do you own any real estate in the Ozark area?	Page 135 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS) 3)ss. 4 COUNTY OF SALINE) 5 I, JANESE FERGUSON SMITH, CCR, RPR, a 6 Notary Public in and for Saline County, Arkansas do 7 hereby certify that the facts stated by me in the 8 caption of the foregoing matter are true; and that 9 the foregoing matter was transcribed by me, to the 10 best of my ability and understanding, from my machine 11 shorthand notes taken at the time and place set out 12 in the caption hereto. 13 In accordance with Rule 30(e) of the 14 Rules of Civil Procedure, review of the transcript 15 was waived by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither 17 counsel for, related to, nor employed by any of the 18 parties to the action in which this proceeding was 19 taken; and, further that I am not a relative or 20 employee of any attorney or counsel employed by the 21 parties hereto, not financially interested or 22 otherwise, in the outcome of this action. 23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 24 this, the 24th day of February, 2015. 25 26 JANESE FERGUSON SMITH, CCR, RPR 27 Notary Public for Saline County 28 and Court Reporter.
Page 134 1 A. In the Ozark area? 2 Q. Yes, sir. 3 A. Yes. 4 Q. I presume you own your residence? 5 A. Yes. 6 Q. Any besides your residence? 7 A. No. 8 Q. Okay. Do you have an interest in any 9 commercial properties or potential commercial 10 properties in Ozark? 11 A. No. 12 MR. MCKAY: Those are all the 13 questions I have. Thank you for your time. 14 THE WITNESS: Thank you. 15 MR. BROCKETT: I don't have anything. 16 (The deposition was concluded at 4:35 p.m.) 17 18 19 20 21 22 23 24 25	

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