

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

CITY OF OZARK, ARKANSAS, a municipal corporation	)	
	)	
Plaintiff,	)	
	)	
	)	
vs.	)	
	)	
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
the ARKANSAS STATE HIGHWAY	)	
& TRANSPORTATION DEPARTMENT	)	
(an Agency of) The State of Arkansas,	)	CIVIL ACTION NO:2:14-CV-02196-
TLB	)	
AND THE ARKANSAS STATE HIGHWAY	)	
COMMISSION	)	
	)	
Defendants,	)	

**PLAINTIFF'S SUPPLEMENTAL FILING OF EXHIBITS TO THE PLAINTIFF'S
RESPONSE AND OPPOSITION TO THE DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

Comes now the Plaintiff, the City of Ozark, Arkansas, a municipal corporation by and through its undersigned counsel, Christopher D. Brockett of Sayre & Brockett, and for its Supplemental Exhibits to the Plaintiff's Response and Opposition to the Defendant's Motion for Summary Judgment filed herein on and even date herewith and does file Exhibit N-1 through Q as shown on the Table of Exhibits.

Respectfully submitted:

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

Email: cbrockett@bslawarkansas.com
ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

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

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

Joseph McKay
Friday, Eldredge & Clark, LLP
400 W. Capitol Ave., Suite
2000
Little Rock, Arkansas 72201-
3522
Telephone: (501) 370-1430
Facsimile: (501) 244-5340

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

Done at Ozark, Arkansas, this 25th day of May 2015.

/s/ Christopher D. Brockett
Christopher D. Brockett

EXHIBIT N-1
DEED OF HAIL TO HAIL

37

INST.	W D	RECORD	Old	C	PAGE	70-2
Con. \$ /	Date 8 / 13 / 39	Reg. —			Dow. In D. —	N. P.
Lien /	Ack. " / 15 "	Def. ✓			Dow. " A. ✓	J. P.
Int. Con. All Pt.	Filed 8 / 17 / 39	All Ack.			H'ms't'd D. —	Cl'k ✓
Co. Seal /	Co. Ex.	Of. Seal ✓			H'ms't'd A. —	Wife Ex.

John Hall & Sarah

TO

William Hall

Subject to		Comp. by	
NE	NW	SE	SW
NE NW SE SW	NE NW SE SW	NE NW SE SW	NE NW SE SW
Beg. at SW Cor of SW Frl 1		36-10-27	
Thence down Ark River with its meanderings to a Mulb. tree near the River as a corner to sd tract so as to embrace all the land to the waters edge along said river, the whole extent of said line; Th N to the N bdy line of said Frl 1 Sec; Th W with sd N Bdy line to the NW Cor of sd frl 1 Sec; Th S with the line between Secs 35 & 36 in said Twp to beg. Cont'f 50 acres more or less.			

Act of John Hall not taken.
 xife acts as Jas. W. Pendleton. 7. ca
 signed in presence of David
 Walker & A. Hall.

(over)

EXHIBIT N-2
DEED OF CURETON TO QUAILE

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

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

William H. Curleton
James F. Curiale

Subject to —

Comp. by

NE				NW				SE				SW				Sec. Twp. Range Acres			
NE	SE	SW	NW	NE	SE	SW	NW	NE	SE	SW	NW	NE	SE	SW	NW	36	10	27	✓
<i>By which north line of road on it</i> <i>Point at R. (station) is mentioned as a</i> <i>cut here is a dead road from William</i> <i>Thal's (Succumbah) has wife to David</i> <i>Walker & Archibald for the land</i> <i>on which the house of David is the</i> <i>Co. of State of record is situated, known</i> <i>& designated on the plat of the survey</i> <i>of public lands as the</i> <i>S. W. 1/4</i>																36	10	27	✓
<i>The N. 1/4 boundary line of 1/4</i> <i>sd. 14 sec. 14. E. with sd. Northern</i> <i>boundary line to N. 1/4 cor. sd. 1/4</i> <i>Sec. 14. S. with the line between the</i> <i>S. 1/4 & N. 1/4 14 - 36 - to Ark. River</i> <i>1/4 N. with the mean sd. Ark. R.</i> <i>to beg. so as to include all the</i> <i>land to the water edge</i> <i>Contg. 43 1/2</i> <i>Acres</i>																43	1/2		
<i>By A. L. Barry et al.</i>																			

EXHIBIT N-3
DEED OF BOURLAND TO CHURCH

PAGE 59

Mon. \$255 *	Date	11	2	93	Reg. ✓	Dow. in D. *	N. P.
Sec.	Ack.	"	"	"	Def.	Dow. " A. *	J. P. *
Adv. Con. Att. Pt. 4	Filed	11	2	93	All Ack. *	H'ms't'd D. *	Cl'k
Co. Seal	Co. Ex.				Of. Seal *	H'ms't'd A. *	Wife Ex. *

J. V. Boulevard & Bonnie J
20
Samuel Church

subject to _____

Comp. by

NE		NW		SE		SW		Sec.	Twp.	Range	Acres	
NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	*
xxxxxxx xxxx Pt SW SW xxxxxxx								36	10	27	xxxx ^{1/2}	
Near & N. of the mouth of Garter. Sound. on S. by Arks. riv. on the N. by the tract of L. R. & F. S. Ry. on the E. by a parcel of land deed by J. C. Smider to John & <u>Cornelia</u> Church, on the W. by a parcel of land owned by other persons Conty. xxxxxxx xxxx $\frac{1}{4}$ of $1\frac{1}{2}$ acres formerly owned by N Barclift. An und $\frac{1}{4}$ int. conveyed.												
<u>S</u>								36	10	27		

EXHIBIT N-4
DEED OF CHURCH TO BOURLAND

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

Samuel Church & Jinorie
To
J. V. Bourland

Subject to —		Comp. by	
NE	NW	SE	SW
Sec.	Twp.	Range	Acres

S. of the Ry. at the mouth of Gar
Creek
and being all the land where I now
live, and all the land I own in the
incorporated town of Ozark Ark, and
South of the Ry. at the mouth of Gar
Creek, and rather between the mouth
of said creek and the Ark River

Husband also release H mustead in
ack.

B4 M. S. Sutherland, F. Co.

EXHIBIT N-5
DEED FROM BOURLAND TO WALTING

EXHIBIT N-6
DEED FROM WALTING TO OLIVER

INST. WD RECORD "V" PAGE 139

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

JULIA WALTING

TO

MARTIN OLIVER

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

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

ALSO

Part of the SW/4 of the SE/4 of 36 10 27 31 in Ozark, Ark; South of the Little Rock & Ft. Smith Railway at the mouth of Car Creek and between the railway & the Arkansas River, being lands formerly owned by Samuel Church being lands conveyed by R. R. Walting by will to me and Janice Cunningham. I hereby intend to convey my undivided one-half interest in all said lands.

OVER

EXHIBIT O-1
DEPOSITION R. HALL

Roxie Hall 2/13/2015

City of Ozark v. Union Pacific Railroad Company

Page 20

1 Q. You have to answer out loud.

2 A. Yes. Sorry. See, I told you I can't do that.

3 Q. Before -- did you say four or five years or
4 five to six years?

5 A. Five to six years.

6 Q. Okay. Before five or six years ago do you
7 recall any complaints like that?

8 A. Not to -- no, no.

9 Q. Okay. Around 2000, 2001 do you recall any
10 complaints from anyone about it?

11 A. I do not.

12 Q. About the whistles being blown?

13 A. I do not.

14 Q. Okay. Is it possible those things could have
15 been brought up at a city council meeting, you just
16 don't recall that?

17 A. Possibly.

18 Q. Okay.

19 A. But I can't tell you that I do remember that
20 being discussed.

21 Q. Okay. All right. Do you remember, do you ever
22 recall having any knowledge of this Oliver Street
23 crossing being removed?

24 A. No.

25 Q. Okay. Were you involved at all in any

1 city. Do you remember any of those discussions?

2 A. No.

3 Q. Okay.

4 A. And with -- well, never mind. You don't want a
5 public input on that, so I'll be quiet.

6 Q. Go ahead, if you need to add something.

7 A. With the three of those that you named, I would
8 have to go outside and see if they told me it was
9 raining.

10 Q. You don't trust those three?

11 A. Correct. I'll just tell you.

12 Q. Okay.

13 A. Sorry. I'm probably not supposed to say that;
14 am I? I have dealt with all three of them, and
15 honestly, I would have to look.

16 I'm sorry. Not to say that meeting didn't
17 happen, and it could have happened just with the
18 three of them and been considered a council meeting.

19 Q. Or it could have happened during one of the
20 times when you were not present?

21 A. And it could have.

22 Q. Okay. Let me let you look at Exhibit 82. If
23 you will just read that and let me know when you are
24 finished, then I will ask you some questions about
25 that.

1 Let me just look at my list.

2 THE WITNESS: I told you.

3 MR. MCKAY: Let me just look at my
4 list and just make sure there is nothing
5 else I need to ask you about.

6 THE WITNESS: Yes, because I have been
7 a nervous wreck all day today about this.
8 Don't make me come back.

9 MR. MCKAY: I think that's all I have.
10 Thank you for your time.

11 EXAMINATION

12 BY MR. BROCKETT:

13 Q. I just have a couple of quick questions. You
14 were on the city council when Todd Timmerman was
15 mayor?

16 A. Yes.

17 Q. Okay. As a city councilman have you ever or
18 have you witnessed any business being conducted
19 without the city council voting on it?

20 A. I would hope not. I have not -- I have not
21 participated in any of that.

22 Q. Okay. Mr. Edgin stated that, you know, if such
23 in this case that we're referring to when the letter
24 was mentioned, he stated that it was at the close of
25 business, after the meeting was adjourned, that no

1 one objected, so his opinion was the city council
2 approved it by not objecting to it --

3 A. No.

4 Q. -- do you believe that is the correct way the
5 city council works?

6 A. No.

7 Q. Okay. Have you ever been involved in a closing
8 of a street, a city street, or city alleyway?

9 A. Yes. Here at the bank.

10 Q. Okay. And what was that process; do you
11 remember?

12 A. We -- they were -- so the bank could expand
13 their parking lot we blocked off, I think it was. I
14 can't remember the street number, but it's just right
15 up there. And there was some opposition to it, but
16 it was what was best for Ozark, so we did close that.

17 Q. Okay. And did the city council have to vote on
18 that?

19 A. Yes, we did.

20 Q. Okay.

21 A. And it was -- it was brought up one month. We
22 waited, got public input, and it was, I want to say
23 two months later, before we actually did a voting
24 process on that.

25 Q. Okay.

Roxie Hall 2/13/2015

City of Ozark v. Union Pacific Railroad Company

Page 43

1 A. But it was on the radio, newspaper. People
2 knew it. We actually -- I did, went around to the
3 neighbors asking, you know, people that had used that
4 street how they felt about it to get their input on
5 that.

6 Q. Okay. Do you think a mayor without the vote of
7 the city council would have the authority to close a
8 crossing --

9 A. No.

10 Q. -- or close a city street?

11 A. No.

12 MR. MCKAY: Let me object to form and
13 foundation. Go ahead.

14 A. No.

15 Q. Okay.

16 MR. BROCKETT: All right. That's all
17 I have.

18 MR. MCKAY: Thank you so much.

19 THE WITNESS: Thank you.

20 MR. MCKAY: I appreciate it.

21 (The deposition was concluded at 3:41 p.m.)
22
23
24
25

EXHIBIT O-2
DEPOSITION R. MCCLLELLAN

Page 15

1 Q. Okay. And I'm assuming you started with one
2 mayor and then went to a different mayor. What mayor
3 did you start with?

4 A. I started with Todd Timmerman.

5 Q. And then who was the next mayor?

6 A. He went to prison.

7 Q. Right. Who was the mayor after Mr. Timmerman?

8 A. That was real stressful for me.

9 Q. Okay.

10 A. I mean, he had five kids. That broke my heart
11 really to have to send him to prison.

12 Q. Who was the mayor after Mayor Timmerman?

13 A. Bat Coley.

14 Q. Okay. Do you --

15 A. I don't know his first name. He is dead. We
16 buried him.

17 Q. Do you remember at any point when you were on
18 the council anyone, any discussion on the council
19 about the crossing?

20 A. No.

21 Q. Okay. All right.

22 A. I don't think it's in the minutes. You would
23 have to check.

24 Q. Okay. And there were sometimes discussions
25 that happened that aren't in the minutes; correct?

EXHIBIT O-3
DEPOSITION T.R. MCNUTT

1 A. No, I haven't seen those.

2 Q. Okay. So if the city council meeting minutes
3 reflect that Ms. Key came to the city council and
4 provided those statements to the city council, are
5 you saying that's incorrect?

6 A. I'm not saying she didn't, but I don't, right
7 now I don't recall seeing them, but.

8 Q. All right. And then you also talked about a
9 quiet zone. You said there was a resolution to
10 declare that a quiet zone?

11 A. As far as I know, the best of my memory. Now,
12 I'm sure there was, because it was a five-one vote on
13 it. I don't think it was an ordinance. Well, it
14 shouldn't have been, but it was a resolution that, to
15 ask the railroad, railroad people to quit blowing the
16 horn. And so I guess Todd handled that, and it
17 wasn't long that it was a quiet zone.

18 Q. Okay. Did Todd often do things that weren't
19 necessarily legal?

20 A. Well, that part I wouldn't know. He did --

21 Q. Was he convicted of a felony?

22 A. He did something that was illegal, yes, and he
23 went to prison for it.

24 Q. Okay. And you also state that you believe that
25 the 2001 meeting was adjourned at the time he read

1 the letter?

2 A. To the best of my knowledge. Now, that's what,
3 you know -- I, I couldn't be certain on that, but I
4 think it was adjourned.

5 Q. Okay. Do you remember if he actually read the
6 letter or if he just held it up and shook it?

7 A. I think he just held it up and explained to us
8 what it was about, you know, to the best of my
9 knowledge, but that's a while back, and asked if
10 anybody had any input on it or whatever.

11 Q. Okay. Have you been involved with the, either
12 the transient dock on the north side discussion or
13 the marina on the south side discussion with Main
14 Street?

15 A. No.

16 Q. Okay. Have you attended any Main Street
17 meetings?

18 A. No.

19 Q. Okay. You also mentioned that the trail would
20 have to be on the Union Pacific property? How --
21 what have you seen that would --

22 A. Well --

23 Q. -- support that answer?

24 A. -- if their right-of-way is 50 feet either side
25 of the track, it would, it would be. And also it's a

EXHIBIT O-4
DEPOSITION J. MILAM

John Milam 2/26/2015

City of Ozark v. Union Pacific Railroad Company

Page 26

1 wouldn't blow the whistle anymore, and therefore the
2 person that was complaining wouldn't be complaining
3 anymore.

4 Q. Okay. So you have a memory of Mayor Timmerman
5 reading a letter from the railroad agreeing to take
6 the crossing out; is that correct?

7 A. That's correct.

8 Q. And if they took the crossing out they would no
9 longer be blowing their horn; correct?

10 A. That's correct.

11 Q. And the council was in agreement for that to be
12 done?

13 A. I never heard any objection to it.

14 Q. Okay.

15 A. From anybody.

16 Q. Okay. So somewhere in 2001 and 2002 the city
17 council was informed that the railroad, pursuant to
18 the city's request, would take the crossing out; is
19 that correct?

20 A. I'm not sure about that.

21 Q. Okay. It's your memory, though, that there was
22 a complaint made by a citizen about the crossing;
23 correct?

24 A. That's correct.

25 Q. And that -- do you remember asking the mayor to

1 reach out to the railroad, or was there some
2 discussion that the mayor should reach out and talk
3 to the railroad about the crossing?

4 A. I don't think -- I, as an individual, didn't
5 make that request.

6 Q. Okay. Do you remember that being the
7 discussion of the council?

8 A. I can't remember that.

9 Q. Okay. But you recall at some point, and I'm
10 assuming these are two discussions; am I right?
11 There's the first discussion, that there has been a
12 complaint by --

13 A. Yes.

14 Q. -- the citizen; right?

15 A. Yes.

16 Q. Okay. What was sort of the walking orders that
17 the mayor had with respect to telling the council
18 about, about the complaint?

19 A. He told us about the complaint, and he said
20 that he would get with the railroad and see if there
21 is anything that could be done about it.

22 Q. Okay. So then there is a second conversation
23 where Mayor Timmerman reports the railroad said they
24 would take the crossing out so that they won't have
25 to blow anymore; is that right?

John Milam 2/26/2015

City of Ozark v. Union Pacific Railroad Company

Page 35

1 A. I did remember him reading the letter to us.

2 Q. Okay. Because your wife was saying no, you
3 would have come home and told me about it if that had
4 happened.

5 A. I don't... I just, I don't know about that.

6 Q. You don't remember about that conversation or
7 this, what happened at the city council meeting?

8 A. I remember we discussed -- I don't remember
9 much of what we discussed there.

10 Q. Again, at Southern Grill or at the city council
11 meeting?

12 A. At Southern Grill.

13 Q. Okay. Well, when he read the letter out loud
14 to the city council, I will tell you that you are the
15 only city council member that remembers him reading
16 it out loud. What did it say? Do you remember?

17 A. He just said that if they took the tracks out
18 they wouldn't blow the whistle anymore.

19 Q. The crossing?

20 A. The crossing, yeah, if they took the crossing
21 out.

22 Q. Okay. Do you remember if you voted on it?

23 A. No, we didn't. It was just discussion. He
24 just more or less told us about it and...

25 Q. Okay. Did you see the letter?

1 A. He spoke about it.

2 Q. Okay.

3 A. He didn't -- he had the letter, and he spoke
4 about it, but as far as him reading it word for word,
5 he did not.

6 Q. Okay. And to your knowledge, was there a city
7 ordinance to close that crossing?

8 A. No.

9 Q. Okay. To your knowledge, there was no vote on
10 it?

11 A. No, there was no vote.

12 Q. Okay.

13 A. To my knowledge.

14 Q. Okay. So the, would you say the residents of
15 Ozark didn't have the opportunity to voice an
16 objection or approval of that decision?

17 A. I'm not sure about that.

18 Q. Okay. But generally that's why you read it
19 three times; is that correct?

20 A. That's correct.

21 Q. Okay. But in this case it was not read three
22 times?

23 A. I don't ever remember it read once.

24 Q. Okay. Fair enough. What about monetary
25 consideration, do you know if the city got paid

EXHIBIT O-5
DEPOSITION T. TIMMERMAN

1 A. Correct.

2 Q. All right. Do you see down at the bottom of
3 the page 17 where it says McNutt?

4 A. Yes.

5 Q. It's handwritten?

6 A. Yes.

7 Q. I'll, I'll read that into the record. It says,
8 Todd Timmerman put in a letter to the council down at
9 the other place, and it's a courtesy letter from the
10 railroad to say they were closing that, and about
11 that time we requested it be a quiet zone, and they
12 took the cross arms out.

13 Mr. McNutt has already testified about a
14 city council meeting and apparently some letter from
15 the railroad saying they were going to take Oliver,
16 the Oliver -- well, not Oliver Street, whatever the
17 crossing was to the east of the depot. Do you, do
18 you recall having such a letter from the railroad?

19 A. I mean, we had several lines of correspondence
20 and, honestly, I don't remember exactly what -- there
21 was paperwork, and I did present that to the council,
22 probably not in a normal fashion.

23 And the people can testify to the way I ran
24 the city was a little different probably than most
25 mayors have.

EXHIBIT O-6
DEPOSITION J. TOM EDGIN

1 meeting last year about an individual complaining
2 about whistles being blown at the crossing and the
3 railroad informing the city that they would agree to
4 take the crossing out.

5 A. No.

6 Q. Well, I am explaining that was a discussion at
7 a recent meeting.

8 A. Right.

9 Q. Okay.

10 A. I wasn't at that meeting.

11 Q. Okay. All right. What I want to do is I want
12 to read you an excerpt that Mr. McNutt stated at the
13 meeting and just see if this refreshes your
14 recollection or if you remember being a part of this
15 at all.

16 And Mr. McNutt is referring to a meeting
17 when Todd Timmerman was the mayor. He said, Todd
18 Timmerman put a letter to the council down at the
19 other place, and it's a courtesy letter from the
20 railroad to say they were closing that, talking about
21 the crossing. And about that time we requested it be
22 a quiet zone, and they took the crossing out.

23 Do you know if you were at a meeting where
24 Todd Timmerman told the council that the railroad had
25 said they were going to close the crossing?

1 knew it by.

2 Q. Okay.

3 A. I imagine after my statement that the city
4 won't want me as a witness. That's just what I
5 imagine.

6 Q. Okay.

7 A. I would like to be excluded, if I could, but if
8 you decided I can be a witness, I will be, but I
9 don't want to be because I don't have anything good
10 to say about the situation.

11 Q. What are your thoughts on the situation?

12 A. Pardon?

13 Q. What are your thoughts --

14 A. My thoughts are we ain't got no damn business
15 even trying to sue the railroad over something that
16 they agreed to.

17 Q. Okay.

18 A. And I partially agreed to.

19 Q. As a member of the city council?

20 A. Not in a public meeting but as a member, yes.

21 Q. Okay.

22 MR. MCKAY: Okay. I don't think I
23 have any other questions. Thank you for
24 your time.

25 THE WITNESS: All right.

EXAMINATION

BY MR. BROCKETT:

Q. Mr. Edgin, during the six years that you were on the city council, did the city council normally do business outside of the public realm?

A. Not normally, no.

Q. How many times can you remember doing business outside the public quorum?

A. I don't remember any.

Q. Other than this one time?

A. That was just a conversation, yes.

Q. Okay.

A. We weren't in the, we weren't in the habit of doing business outside of a meeting, no.

Q. Okay.

A. That's the only time that I remember it.

Q. Okay. Did you guys actually vote?

A. No. It wasn't no vote. No nothing.

Q. Okay. Then in the six years that you were on the city council does the mayor have the authority to make decisions without the city --

A. Yes, he did.

Q. Let me -- okay, well, let me, let me finish the sentence first, or the question. Well, let me change it. First, what authority does the mayor have as the

Page 27

1 city --

2 A. I don't know what all authority. I know one of
3 the main authority he has is not to quit the job.

4 Q. Not to quit the job?

5 A. Right, because we asked him to quit when he got
6 in trouble, and he, he declined to do that, and in
7 checking with the municipal league he had that
8 authority.

9 Q. Correct. And did you guys pass ordinances
10 restricting his authority?

11 A. Yes, we did.

12 Q. Okay. But with regards to closing a city
13 street or a city alley, does he have that authority
14 without the approval of the city council?

15 A. Not really, I don't think.

16 Q. Okay. Did -- during the six years you were
17 city council member, did you, did you close a city
18 street during that --

19 A. Not outside of a meeting, no.

20 Q. Okay. So during the time that you were on the
21 city council you did have the time to close a city
22 street or alley?

23 A. I can't remember whether we did, but we had the
24 authority, yes.

25 Q. Okay. And do you know what that process would

1 MR. BROCKETT: I do have a follow-up.

2 EXAMINATION

3 BY MR. BROCKETT:

4 Q. Now, Mr. McNutt stated that if a city, if
5 someone was trying to come to a city council and
6 trying to close a city street and there was no
7 objection that it would be deemed accepted; is that
8 correct?

9 A. Right.

10 Q. So you wouldn't have to vote on it?

11 A. Yeah, you'd vote on it, yeah.

12 Q. You would have to still make up a yes or no
13 vote?

14 A. To my knowledge, yes, we always did. Whether
15 we had to or not, we always did.

16 Q. Okay. So, but on this case you did not take a
17 vote? And when I say "this case," with regards to
18 Mayor Timmerman and the crossing, there was no vote
19 taken?

20 A. There wasn't any, any transfer of property from
21 the city to the railroad, so I don't think we took a
22 vote, no.

23 Q. And it was not during the normal meeting; it
24 was after it was adjourned?

25 A. It was after a meeting.

EXHIBIT P
AFFIDAVIT OF SANDY KEY

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

**CITY OF OZARK, ARKANSAS, a municipal
corporation**)

Plaintiff,)

vs.)

**UNION PACIFIC RAILROAD COMPANY,
the ARKANSAS STATE HIGHWAY
& TRANSPORTATION DEPARTMENT
(an Agency of) The State of Arkansas,
AND THE ARKANSAS STATE HIGHWAY
COMMISSION**)

Defendants,)

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

AFFIDAVIT OF SANDY KEY

I, Sandy Key, having first been duly sworn, state:

1. I am a resident of the State of Arkansas. I am more than 21 years of age. I have lived in Arkansas for approximately 37 years. I am making this affidavit with my own personal knowledge.

2. I am the current director of Main St., Ozark, a nonprofit 501(c)(3) organization that has a stated mission of promoting economic development in the downtown area of Ozark, Arkansas (the "City") and revitalizing and renovating the City. I have served in my capacity as director for approximately 19 years.

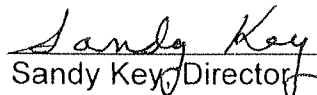
3. In my capacity as director of Main St. Ozark, I have attended nearly all of the City's city council meetings over the past 19 years. I have been fully involved with assisting the City in obtaining a donation of the former Iron Mountain Railroad Depot (the "Depot") that the City received in 1996 from the Defendant, Union Pacific Railroad

Company. I assisted in obtaining grant money to renovate the Depot in order that the Depot could be used as a museum, which the Depot is currently used as a museum and tourist attraction.

4. I have also been the lead contact purpose and driving force behind the development of the City's River Front access and the creation of a walking and hiking trail proposal development on land situated on the North shore of the Arkansas River, which the City leased from the U.S. Army Corps of Engineers (the "Corps").

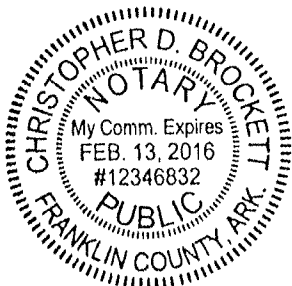
5. Part of the impediment to the creation of the City's river front development is lack of access to the land that the City leased from the Corps, as the at-grade crossing that was there when the project was originally designed was removed by the Defendant. I am aware that the Defendant has stated that the at-grade crossing was removed at the request of the City's city council and former mayor Todd Timmerman. However, I have reviewed all minutes from January 1, 1999 through the period of December 31, 2001 and I have found no reference or discussion regarding the removal of the at-grade railroad crossing or of the City declaring this area to be a quiet zone.

Further Affiant sayeth not.


Sandy Key, Director
Main St. Ozark

STATE OF ARKANSAS)
)
COUNTY OF FRANKLIN)

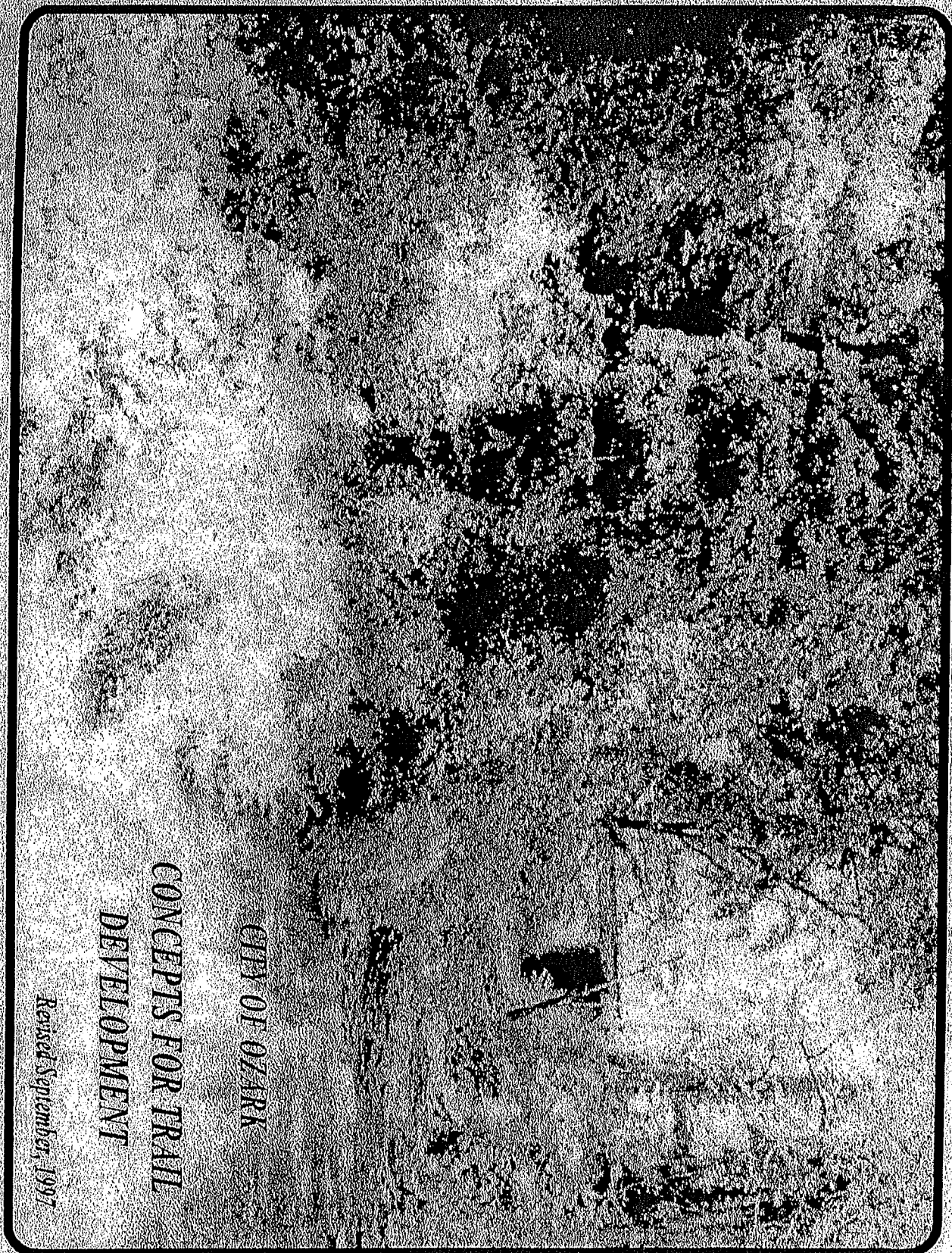
SUBSCRIBED AND SWORN to before me on this 24th day of May, 2015.




NOTARY PUBLIC

EXHIBIT Q

COVER PAGE FOR MAIN ST. OZARK, WALKING TRAIL PLAN



CITY OF OZARK

CONCEPTS FOR TRAIL DEVELOPMENT

Prepared by:

Western Arkansas Planning and Development District

IN COOPERATION WITH

*The City of Ozark
and*

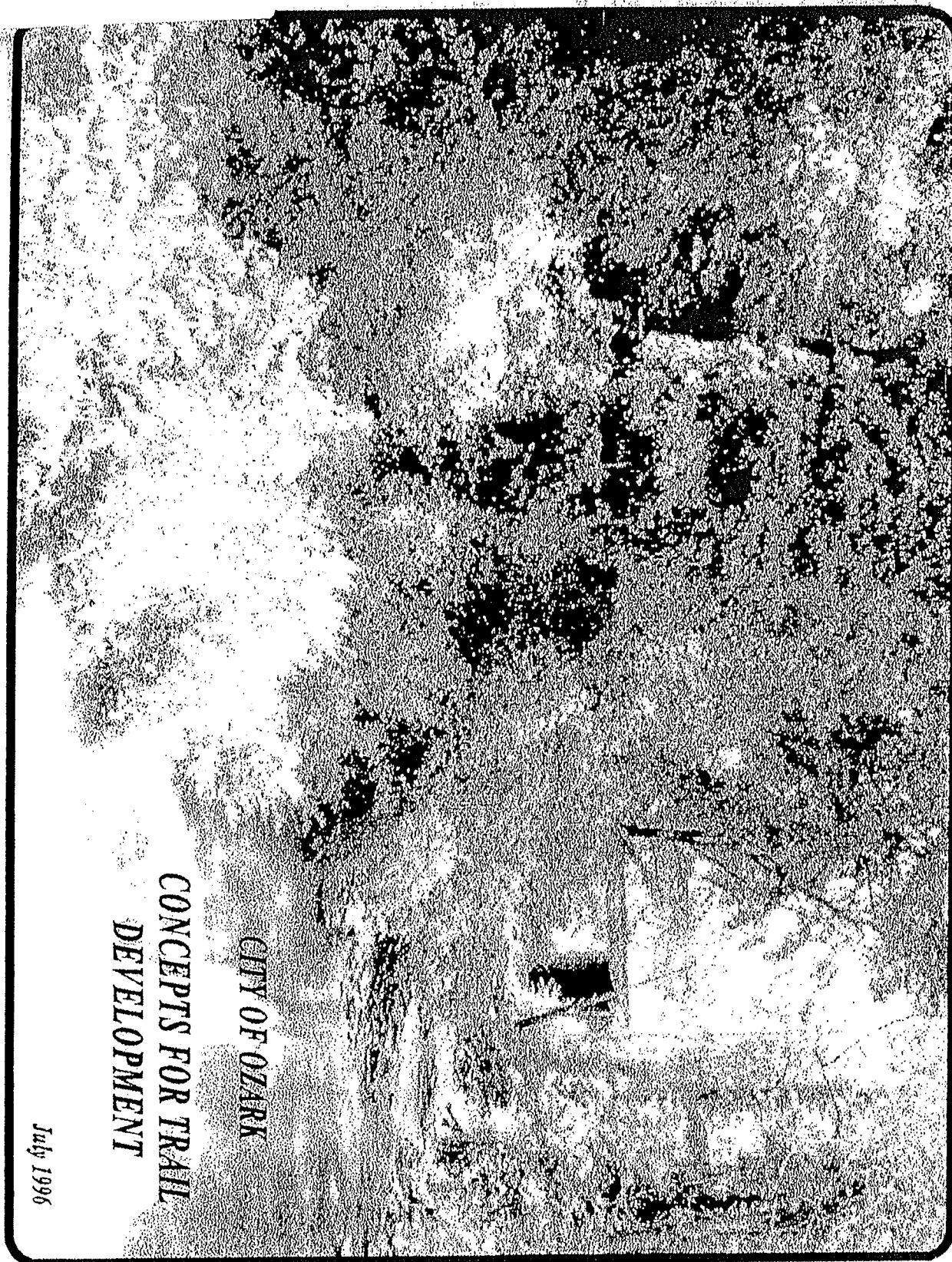
The Arkansas State Highway and Transportation Department

Revised September, 1997

*The contents of this report reflect the view of the
Western Arkansas Planning and Development District
and the City of Ozark
but may not necessarily reflect the official views or
policies of the Arkansas State Highway and Transportation Department*

Front Cover Photograph: The east fork of Gar Creek, west of N. 2nd Street in Ozark.

Exhibit "O"



CITY OF OZARK

CONCEPTS FOR TRAIL DEVELOPMENT

Prepared by:

Western Arkansas Planning and Development District

IN COOPERATION WITH

*The City of Ozark
and*

The Arkansas State Highway and Transportation Department

July 1996

*The contents of this report reflect the views of the
Western Arkansas Planning and Development District
and the City of Ozark
but may not necessarily reflect the official views or
policies of the Arkansas State Highway and Transportation Department*

The east fork of Gar Creek, west of N. 2nd Street in Ozark.

PROJECTS DESCRIPTION

The waterfront trails, discussed below, are not presented in any order of development.

North Bank Riverwalk (A Three Phased Project)

Trail Length : Phase I - 1,400 ft.
 (Estimate) Phase II - 1,500 ft.
 Phase III - 1,400 ft.

Difficulty: Moderate
 (Map 2)

The City, in 1994, was awarded Arkansas Transportation Enhancement Program funds for the restoration of the Iron Mountain Railroad Depot and the development of surrounding lands to tie the city landmark to planned pedestrian walkways located between downtown, the Depot, and the Arkansas River. The land linking the Depot to the Arkansas River lies south of the depot between the Union Pacific Railroad (U.P.) tracks and the River's edge. The Arkansas River is relatively shallow along this bank of land which will facilitate the construction of boardwalks along the shoreline, if necessary. A sketch of a portion of the proposed riverwalk is found in the Appendices of this report.

Phase I of the three phased project, will trailhead at the abandoned Iron Mountain Railroad Depot, proceed east on River Street for one city block, cross the U.P. railroad tracks and then turn back west, terminating at a point approximating 3rd Street as indicated. Phase II trail construction connects to the Phase I terminus at a point south of the U.P. rail line and travels east to

the mouth of Gar Creek. Walkers must retrace their steps back to their point of origin in the first and second phase development of the trail.

In Phase III, the trail picks up at the Phase II terminus at Gar Creek and continues north along the west bank of the Creek, crosses U.S. Highway 64, to bring walkers into the City's East Side Park and its facilities. Total length of the North Bank Riverwalk is about 4 1/5 miles.

The walk, located within a few feet of the River, features excellent views of historic Ozark, views of the boats and river barges traveling the Arkansas River, and views of the Ozark Lock and Dam and Powerhouse. Boats and barges can be seen locking through the dam. Activities along the trail will include fishing, waterfowl observation and photography.

Proposed North Bank Corridor: Corps of Engineers' Land, Track Nos. 218, 219, 222, 263, 264, 265, and 293. Riverbank tracts of land for portions of the Phase I development are not listed. (Map 3)