

**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 researched the City's records on various City streets, including the existence of a City street known as Oliver St.

4. In my review of the City's minutes, ordinances and resolutions, I discovered that the City leased property from a Nelsie Oliver for use as a City dump as of June 5, 1940 and this lease continued until at least December 1957, which was the last year that I could find mention of the City paying the lease to Nelsie Oliver. I made copies of the June 5, 1940, May 8, 1951, December 11, 1956, and December 22, 1957 minutes from the City's book of minutes and provided them to the City's attorney, Christopher D. Brockett, in assistance with this lawsuit. Copies of the June 5, 1940, May 8, 1951, December 11, 1956, and December 22, 1957 minutes are attached hereto as **Exhibits A-1, A-2, A-3, and A-4.**

5. In my research, I also discovered a copy of a City ordinance dated October 13, 1942, discussing where Missouri Pacific Railroad Company requested the authority to install an industrial track to further the war effort, which request was approved by the City's city council on an emergency basis. Included and incorporated in this ordinance was a colored blueprint showing where the industrial track was to be laid. On this blueprint was a gravel road that was located at the location of the previous at-grade crossing that I discovered in my research, was referred to and known as the Oliver St. Crossing. A copy of the October 13, 1942 Ordinance and incorporated blueprint is attached hereto as **Exhibit B-1 and B-2.**

6. When I replaced James Gilmer as director of Main St. Ozark, in June 1996, he passed along various historical documents related to the City's downtown area, including maps, development plans, and other miscellaneous documents. In reviewing this information from time to time as part of development options, I discovered a document entitled a City of Ozark, Arkansas House Numbers March 1962. According

to this document, the house numbers and the listing of the occupants were correct at the time of the numbering of the houses in March 1962. This document listed Oliver Street as a City of Ozark Street that had seven (7) listings on the street of Oliver. This included a business named F & S Lumber Co., which I learned later was operated by a local resident named Kenneth Smith. It also showed five (5) residents of individuals that resided on Oliver Street and one vacant house. A copy of the first page, the second page and the Oliver Street page of the March 1962 document are attached hereto as **Exhibit C.**

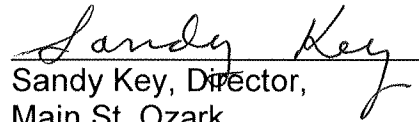
7. I have also worked closely with former mayors of the City, including, Carol Sneath, in researching older maps and records of the City to determine the history of the at-grade crossing that we refer to as the Oliver St. Crossing. This research including finding older official maps of the City to determine whether the gravel road shown on the 1942 Blueprint existed and the first official map that I was able to located was from February 1962. This February 1962 Map was located at the City's offices and I made copies of the 1962 Map including the specific area showing the City's Oliver St., which is involved in the City's dispute with Union Pacific Railroad regarding the reinstallation of the Oliver St. Crossing. The 1962 Map also showed structures on Oliver St., which numbers corresponded with the March 1962 document entitled City of Ozark, Arkansas House Numbers. A copy of the February 1962 Map and the enlarged version showing the structures with number is attached hereto as **Exhibit D-1 and D-2.**

8. In reviewing the records held at the City's offices, I discovered a second map of the City that was prepared on May 1975 by Western Arkansas Planning and Development District, Inc. This 1975 Map shows the City's street called Oliver crossing

Union Pacific's railroad tracks at the location of the Oliver St. Crossing. A copy of this 1975 Map is attached hereto as **Exhibit E**.

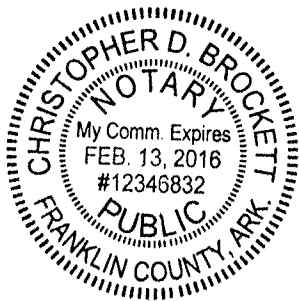
9. All of the above documents were provided to Union Pacific's attorneys during my deposition and we discussed each of these documents in the deposition.

Further Affiant sayeth not.


Sandy Key, Director,
Main St. Ozark

STATE OF ARKANSAS)
)
COUNTY OF FRANKLIN)

SUBSCRIBED AND SWORN to before me on this 26th day of May, 2015.




NOTARY PUBLIC

Exhibit A-1

June 5, 1940 Minutes from City Council

... ..
 \$10.00 more. This was passed. Motion was made by C R Loyd
 and seconded by R J Gammille sr.

There being nothing further to be brought up Garland
 Nichols made motion and it was seconded by C R Loyd to adjourn.
 By vote this was passed.

... ..
 Recorder

... ..
 Mayor

Minutes of the City Council of Ozark, Arkansas June 5, 1940.

The city council of the City of Ozark, Arkansas met
 in Mayor Nichols office on June 5th 1940 at 7:30 P M with
 the following members present; H C Clark, C R Loyd, Vernot Sells
 Garland Nichols, R J Gammille sr, Claude Wakefield jr and Mayor
 Nichols. Also present was Harold Dodgin State Sanitarian.

The sanitation committie reported that four notices
 had been mailed some people in town about their unsanitary
 conditions. Harold Dodgin reported that the sanitary condition
 at Harley Williams place had been taken care of. Hudson Jones
 reported to one of the sanitary committie that he would do
 something about the unsanitary conditions back of his place
 of business. The unsanitary condition back of the Model and
 Kings Cafe is to be investigated by Harold Dodgin and he is to
 report to the sanitation committie. A ditching project for the
 town was presented by Harold Dodgin and the council is highly
 favored ~~of this and will take further steps on~~
 when the cost is determined as the towns part.

The following bills were allowed but the amounts of
 all of them was not known at the meeting;

Oil Co.	Tractor	J T Greer and Son	Paint Streets
J Gammille	Gas Station	Tractor	Ozark Hardware Streets
City Lumber Co.	Cement	Streets	Nelsie Oliver Dumping Ground
Jeff Pruett	Streets	Jeff Holt	L.00 Streets
Ben Burns	Streets	Rass Alston	"
Democrat Enterprise	Notices	Crockett Jeffers	Tractor

H C Clark made motion to pass these and it was seconded by Garland
 Nichols. By vote this passed.

There being nothing further of importance H C Clark made
 motion to adjourn and it was seconded by R J Gammille sr. By Vote
 this passed.

... ..
 Recorder

... ..
 Mayor

Exhibit A-2

May 8, 1951 Minutes from City Council

May 8, 1951

The Ozark City Council met in regular session at the City Hall with Aldermen Gosnell, Smith, Adams, Ledgerwood, Nichols, and Recorder Russell present.

The following bills were read:

Bobby Burns	\$16.00	
Bob Pritchard	26.00	
Jeffers Garage Co.	10.43	
Wilson Trucking	60.00	
North West Ins. Co.	140.00	(Group Ins.)
Coley's Store	1.00	
Rue Caulk	29.32	
A. D. Tucker	4.24	
Weldon, Williams, & Lick	44.69	

Motion by Don Smith, Seconded by Ralph Ledgerwood to pay the bills. Motion Passed.

Motion by Gene Adams, seconded by R. Ledgerwood that we have signs painted for the Dumping Ground instructing people where to dump trash.

The Marshall was instructed to check on some complaints for sanitary toilets.

A discussion was held on the annexation of territory north and east of Ozark.

The Recorder was instructed to pay out \$500. for Mayor's fund.

The Council instructed Greer Nichols to purchase cemetery lot for the city from the J. S. Turner Estate and also one from the Stemberger Estate.

The Council voted to put water on the Gym Grounds and furnish what is needed to do so for the Roadside Park.

A motion was made to amend Ord. #65 to exclude the block.

E. H. Sowell was nominated and accepted to replace H. C. Gosnell as alderman since Gosnell resigned because he had moved out of his ward.

Exhibit A-3

December 11, 1956 Minutes from City Council

Dec. 11, 1956

The Ozark City Council met in regular session in the Mayor's office with the following aldermen present: K. Tucker, Don Smith, Lloyd Sossamon, Henry Gosnell, Kenneth Bratcher, Treas. Wakefield, Recorder Russell, Patrolman Sowell, and Attorney Nichols.

The following bills were read:

Wakefield & Co	\$ 3.87	#261	
Jeffers Garage	3.77	#262	Cemetery
Ark. Equipment Co, Inc	60.57	#263	Streets
Summers Motor Co	2.00	#264	Police
Ozark Hdw. Co	8.06	#265	
Luther Milton	28.83	#266	
Tuckers	13.76	(1.50, F.D. 12.26 Sta.)	
Matthews	3.36	(3.50, F.D. 4.36 Store)	
Ark. Municipal League	75.28	#268	
A. & W	1.50	#270	
Bob Pritchard	14.50	#271	
Russell's Esso	5.76	#272	
Greer Nichols, Exp. L.R.	25.00	#273	

Motion by Don Smith, seconded by K. Bratcher to pay bills. Motion carried.

Mayor stated that there was some labor involved in moving the Romie Wilson building to hospital site for a Civil Defense building, and also for some material. Council agreed to pay these bills when the moving is completed. Mr. Hopper stated that the bill should not amount to over \$20.00.

The subject of having a new census taken was brought up. The Mayor said the turnback was \$8.00 per person. It was estimated that the increase in the State turnback would more than pay the cost of the census.

Motion by Kenneth Bratcher, seconded by Lloyd Sossamon that a new census of the City of Ozark be taken. Greer Nichols stated that he would write to the Bureau of Census tomorrow. Motion carried.

The Mayor stated that he had a request for a new street light on Walker Avenue, east of Phil Caleb's and one in the Nickell Addition, 1 block west of 3rd street. Council agreed to have these added.

Greer Nichols made a report on his trip to the Municipal meeting in Little Rock. His report was very interesting.

(continued on next page)

(December Meeting, Contd)

The Mayor stated that he thought that we should pay the City employees a bonus of \$25.00, (except Ben Darter, who is to be paid \$12.50), and that the monthly warrants should be issued on the 20th of the month this month.

He also said that we should pay Anut Nelcie Oliver \$25.00 for the dumping ground. Also to issue the administrative salary warrants.

Motion by Kenneth Tucker, seconded by Lloyd Sossamon, that the above be paid as suggested. Motion Carried.

The name of W. H. (Bill) Baskin was given to the council as a fire man to replace Theron Gambrel who resigned. Motion by K. B ratcher, seconded by Ken Tucker. Motion Carried.

Meeting Adjourned:

/s/ J. M. Hopper
Mayor

/s/ Claud Russell
Recorder

Exhibit A-4

December 22, 1957 Minutes from City Council

December 22, 1957

The Ozark City Council met in call session, Monday December 22, 1957, at 7:30 a. m. Those in attendance were Mayor J. W. Hooper, Recorder Anderson, Attorney Nichols, and Aldermen Sossamon, Mainard, Smith, Waldon, and Bass.

After the meeting had been called to order, the Mayor stated that the meeting had been called to appoint a successor to complete the unexpired term of Treasurer Claude Wakefield. A Waiver of Notice ~~was~~ to time, place and purpose of the meeting was signed, and the meeting called to order.

Upon motion of Don Smith and seconded by Clifton Mainard, that Ruth Wacaster be appointed as Treasurer of the City of Ozark, Arkansas, to complete the unexpired term of Claude Wakefield, deceased. The vote on the motion was as follows:

Clifton Mainard	Aye
Lloyd Sossamon	"
Don Smith	"
Floyd Bass	"
Gene Waldon	"
Mayor Hopper	"

The motion was declared adopted.

A motion by Clifton Mainard and Seconded by Don Smith, was made to pay Nelsie Oliver \$25.00 as rent on the city dumping grounds. Motion carried. The council also approved payment of salaries to regular city employees before the Christmas Holiday.

There being no further business, the meeting adjourned. Attest: Clifton Mainard
Approved: Clifton Mainard

Exhibit B-1

A copy of the Ordinance dated October 13, 1942

ORDINANCE NO. 40

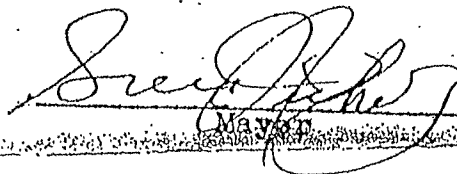
AN ORDINANCE ENTITLED: AN ORDINANCE GRANTING A RIGHT OF WAY TO GUY A. THOMPSON, TRUSTEE, MISSOURI PACIFIC RAILROAD COMPANY, DEBTOR, ACROSS SECOND STREET, THE ALLEY BETWEEN FIRST STREET AND SECOND STREET, AND THE SOUTHERLY PORTION OF WATER OR RIVER STREET FROM A POINT APPROXIMATELY SIXTY FEET EAST OF THE EAST LINE OF FIRST STREET TO THE EAST END OF WATER OR RIVER STREET FOR THE PURPOSE OF CONSTRUCTING A SIDING OR SWITCH TRACK, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OZARK, ARKANSAS:

Section 1. Guy A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor, is hereby granted a right of way for the purpose of laying an industrial track over and across Second Street, over and across the alley between First and Second Streets, and over and across the southerly portion of Water or River Street from a point approximately sixty (60') feet East of the East line of First Street to the East end of Water or River Street, more clearly shown by the blueprint attached hereto and made a part of this ordinance, the said industrial track being shown thereon in yellow.

Section 2. Said industrial track mentioned in Section 1 hereof is necessary to further the war effort, and an emergency is therefore declared to exist, and this ordinance being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval.

Passed and approved this the 13th day of October, 1942.


Mayor

ATTEST:



Exhibit B-2

A copy of the blue print

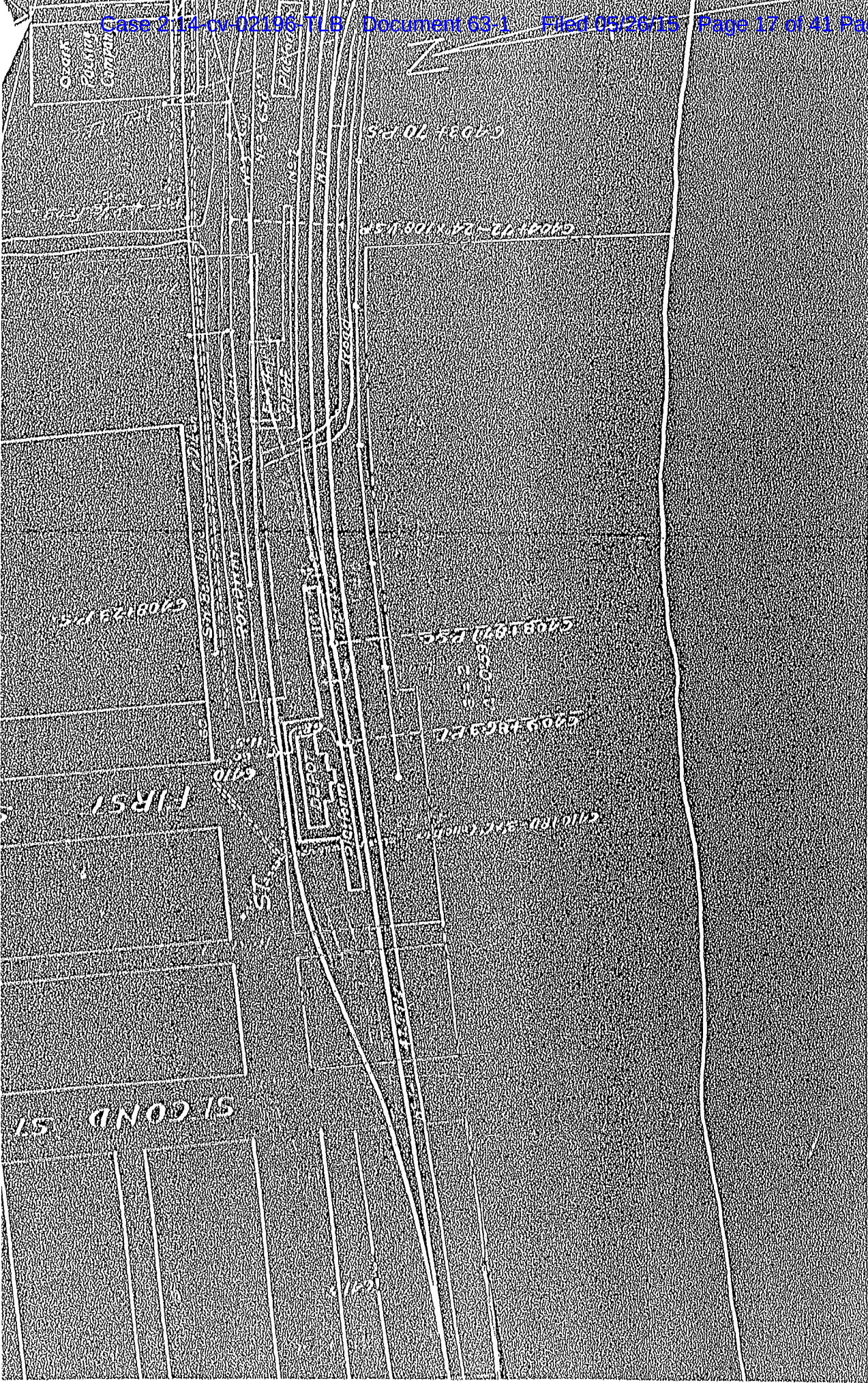


Exhibit C

A copy of the Directory dated March 1962

CITY OF OZARK
ARKANSAS

HOUSE NUMBERS

•

MARCH, 1962

CZARK ARKANSAS CITY DIRECTORY

M A R C H 1 9 6 2

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

OLIVER STREET

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

NORTH OAK STREET

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

EAST SIRING STREET

100 Allen Coley
101 Jess Yarbrough
102 L. B. Johnson
105 George Fry
106 Rachel Brison
108 O. D. Dickenson
107 Nora Williamson
109 Mrs. Herbert Turner
109 $\frac{1}{2}$ David Langston
110 Ernest Nichols
112 Roy Bennett
114 Mrs. Ella Anderson
115 Mary J. Crites
117 T. D. Dickerson
116 Mrs. Lawrence J. Dickerson
118 E. C. Smith. (Apt.)
119 Rose Bevil
120 Joe Sprinkle
200 Jim Kelly
204 John Crites

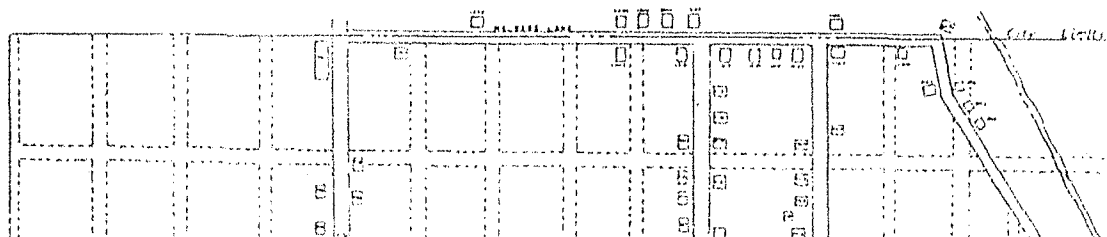
Exhibit D-1

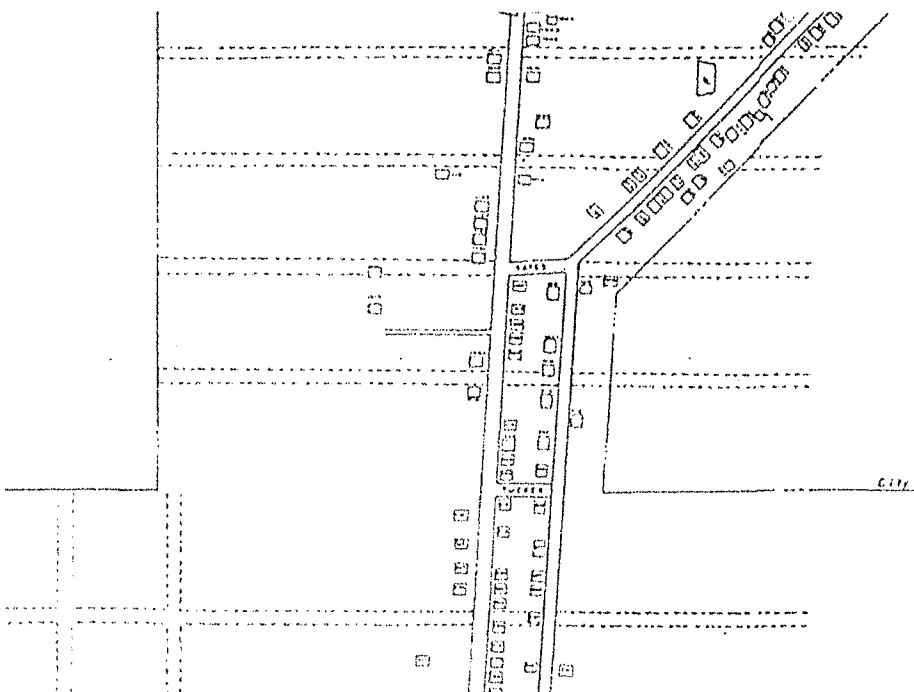
A copy of the February 1962 Map

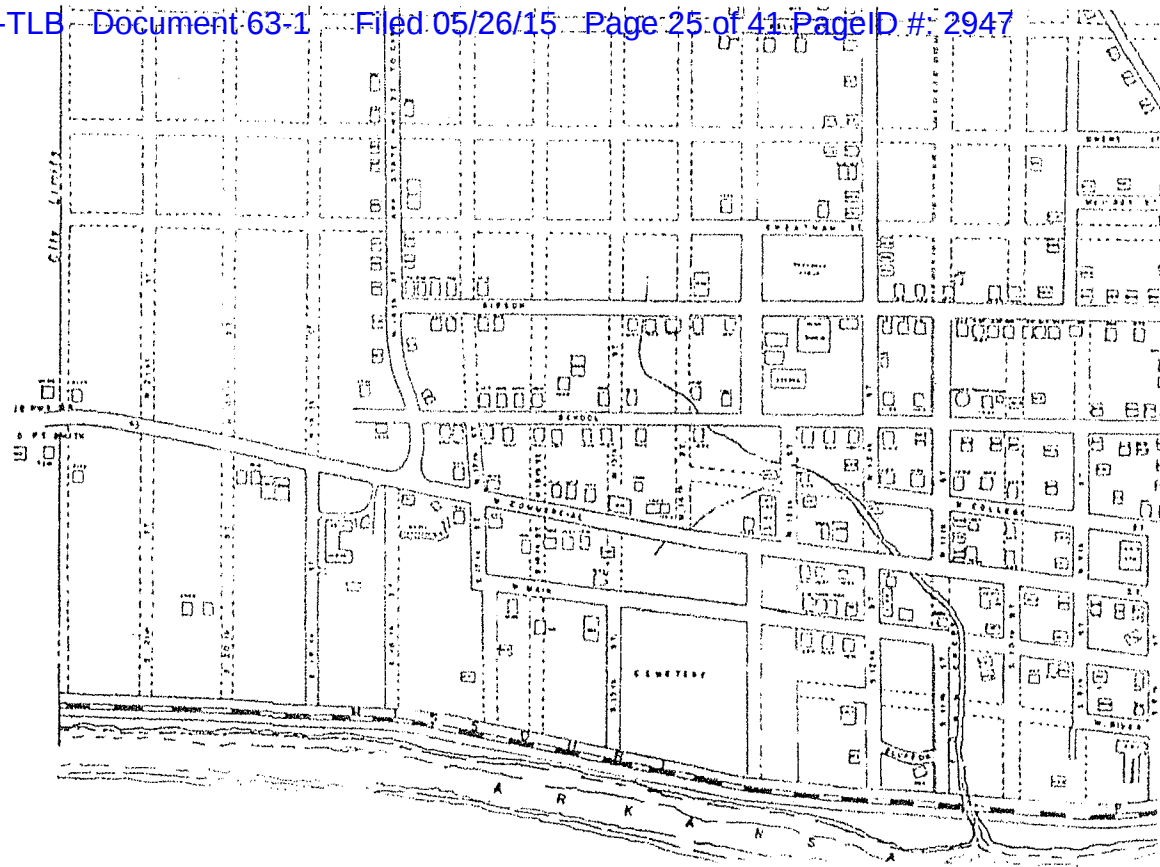
CITY MAP

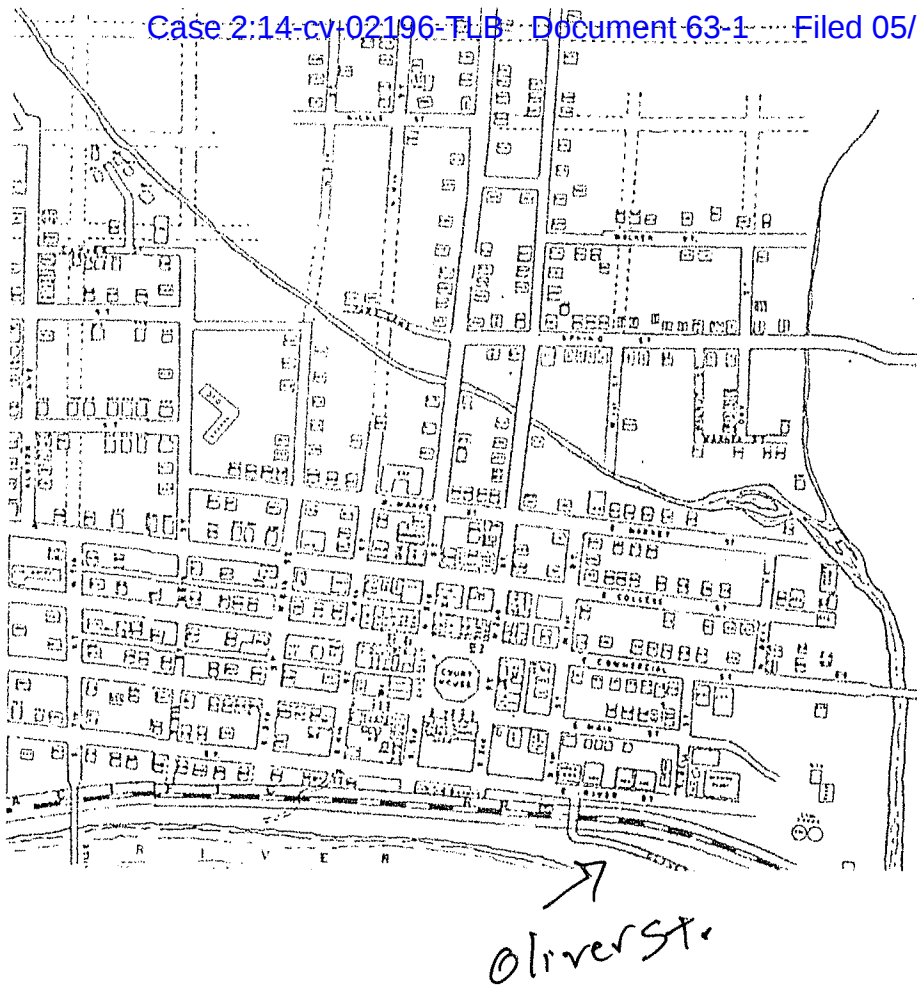
OZARK, ARKANSAS

SCALE
100 200 300
FEET
FEBRUARY, 1962









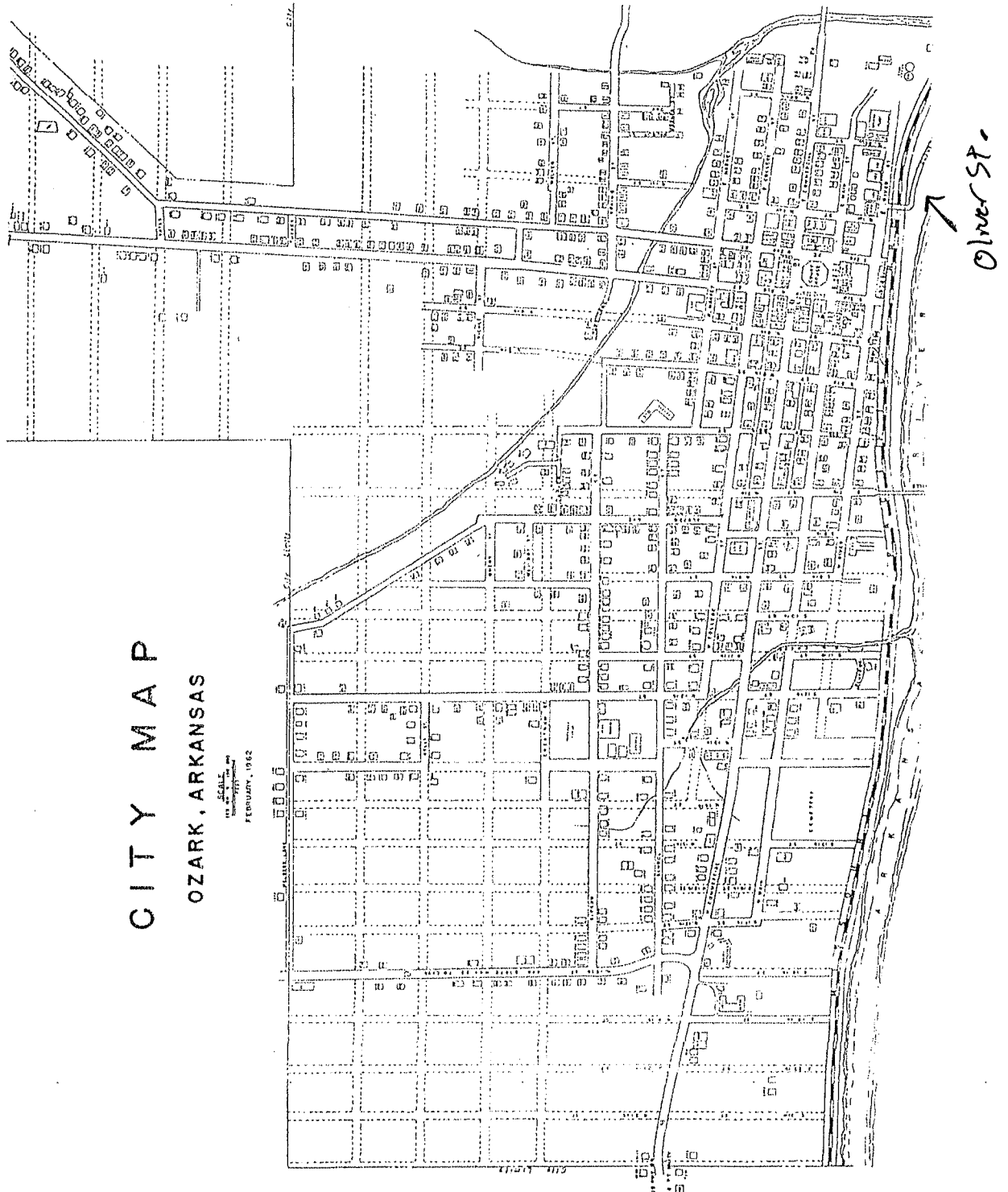
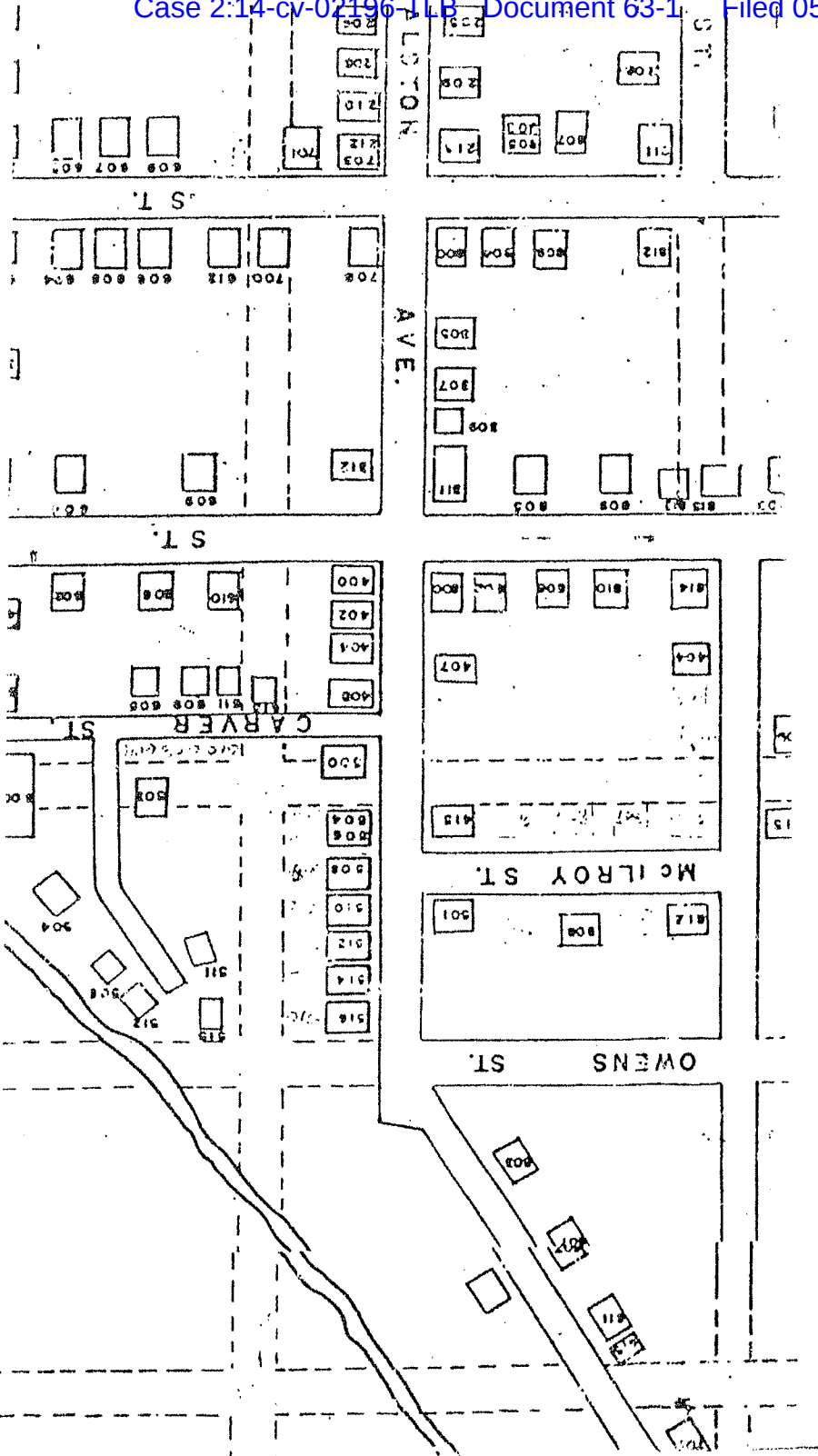
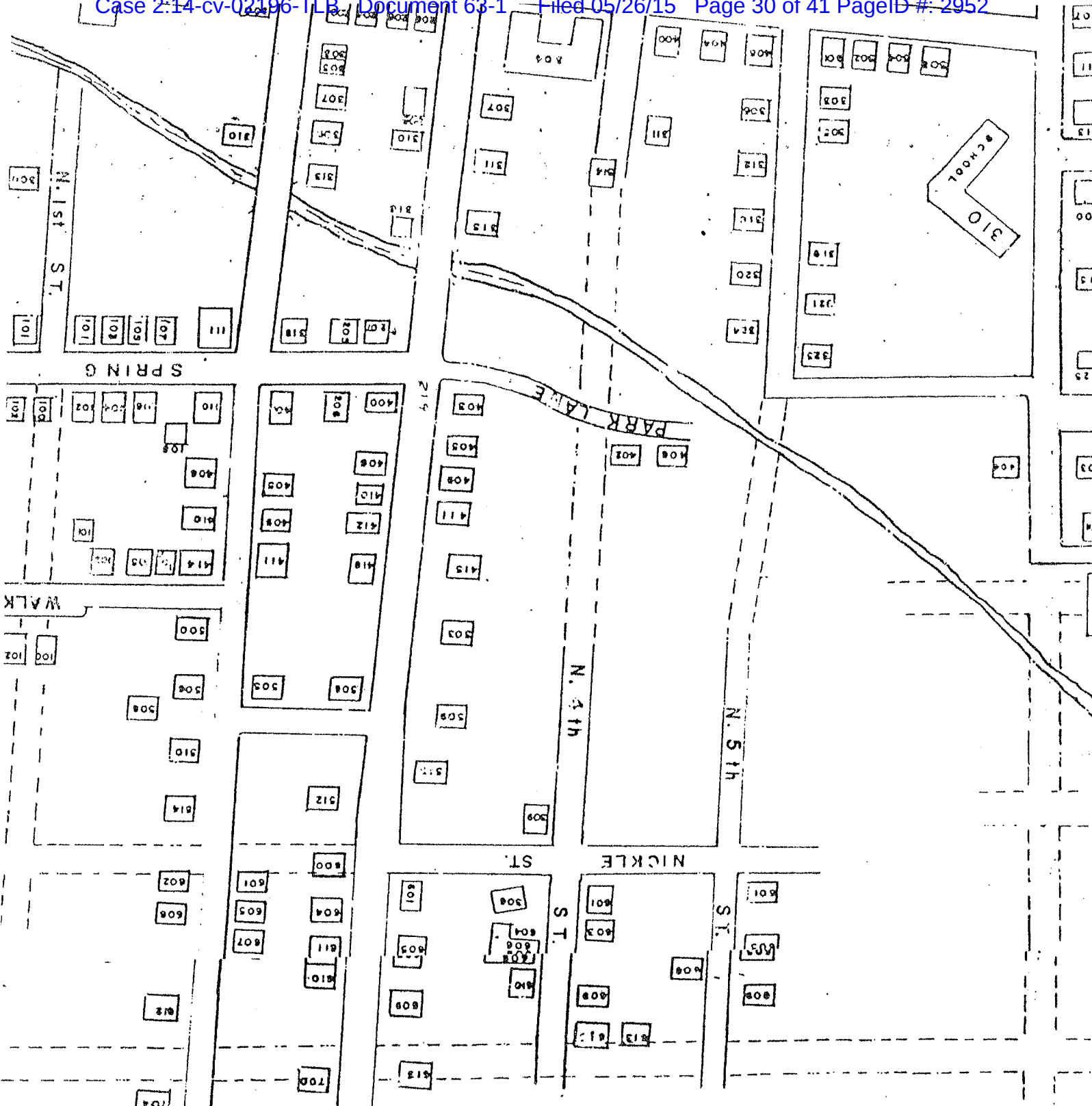
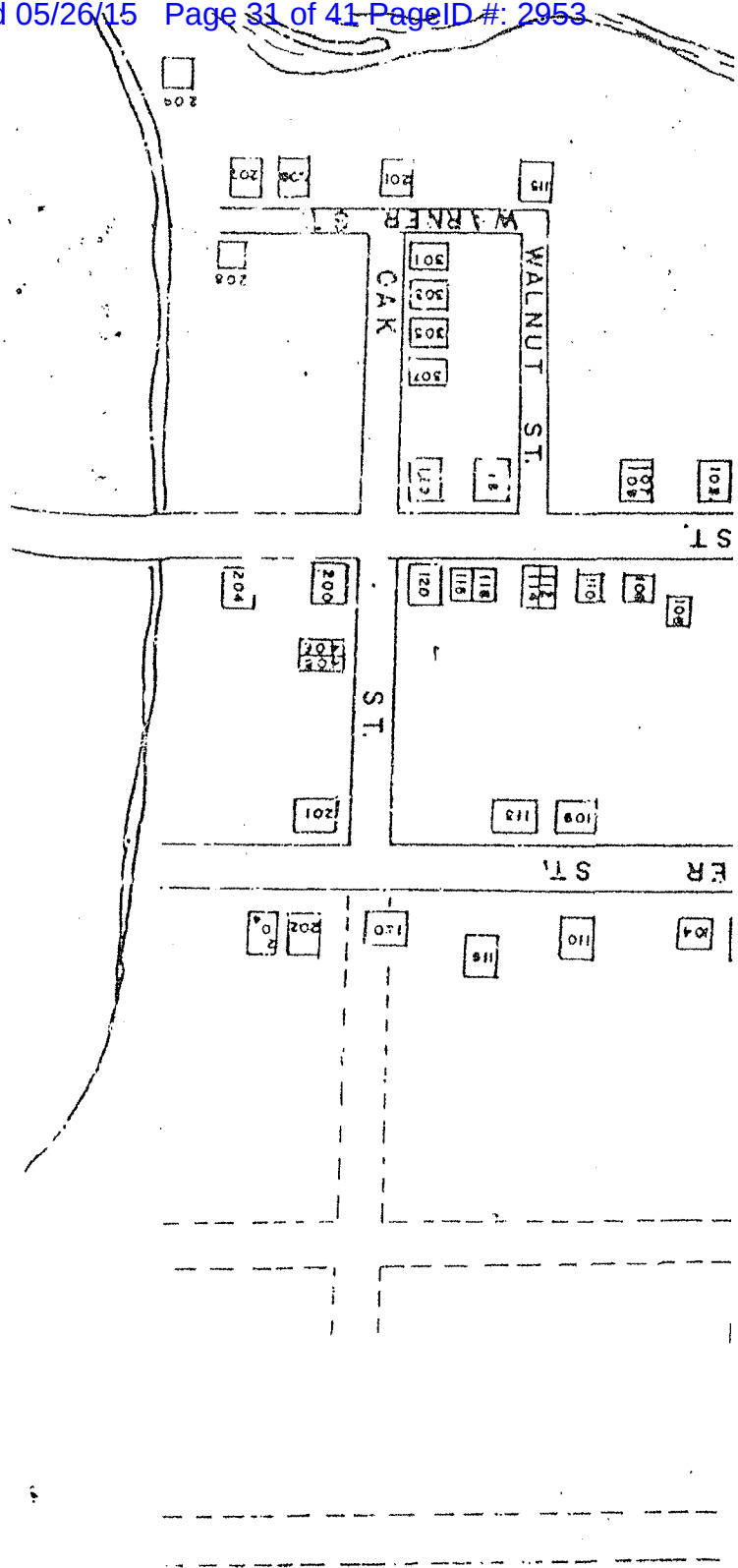


Exhibit D-2

Enlarged version of the February 1962 Map







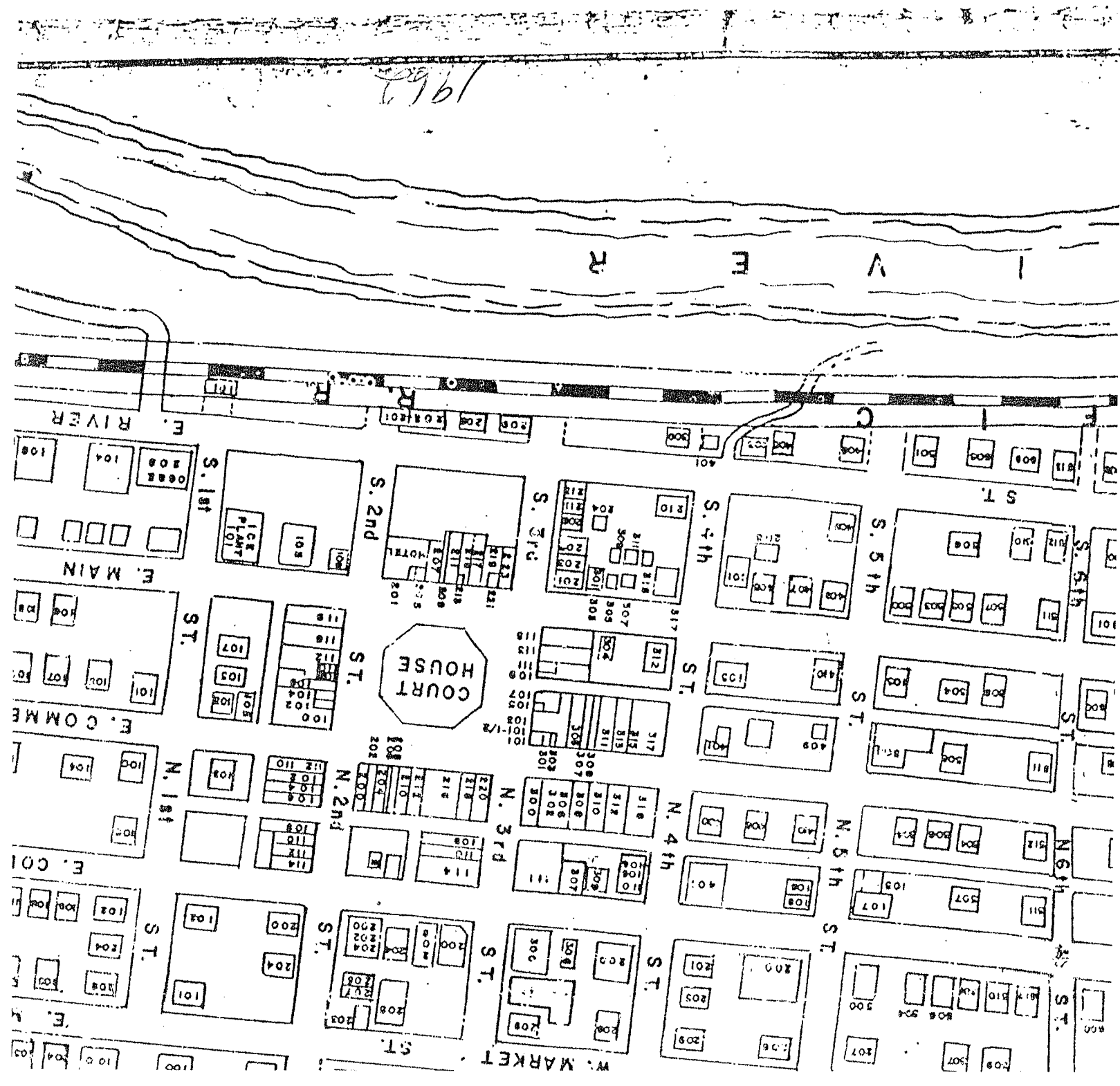
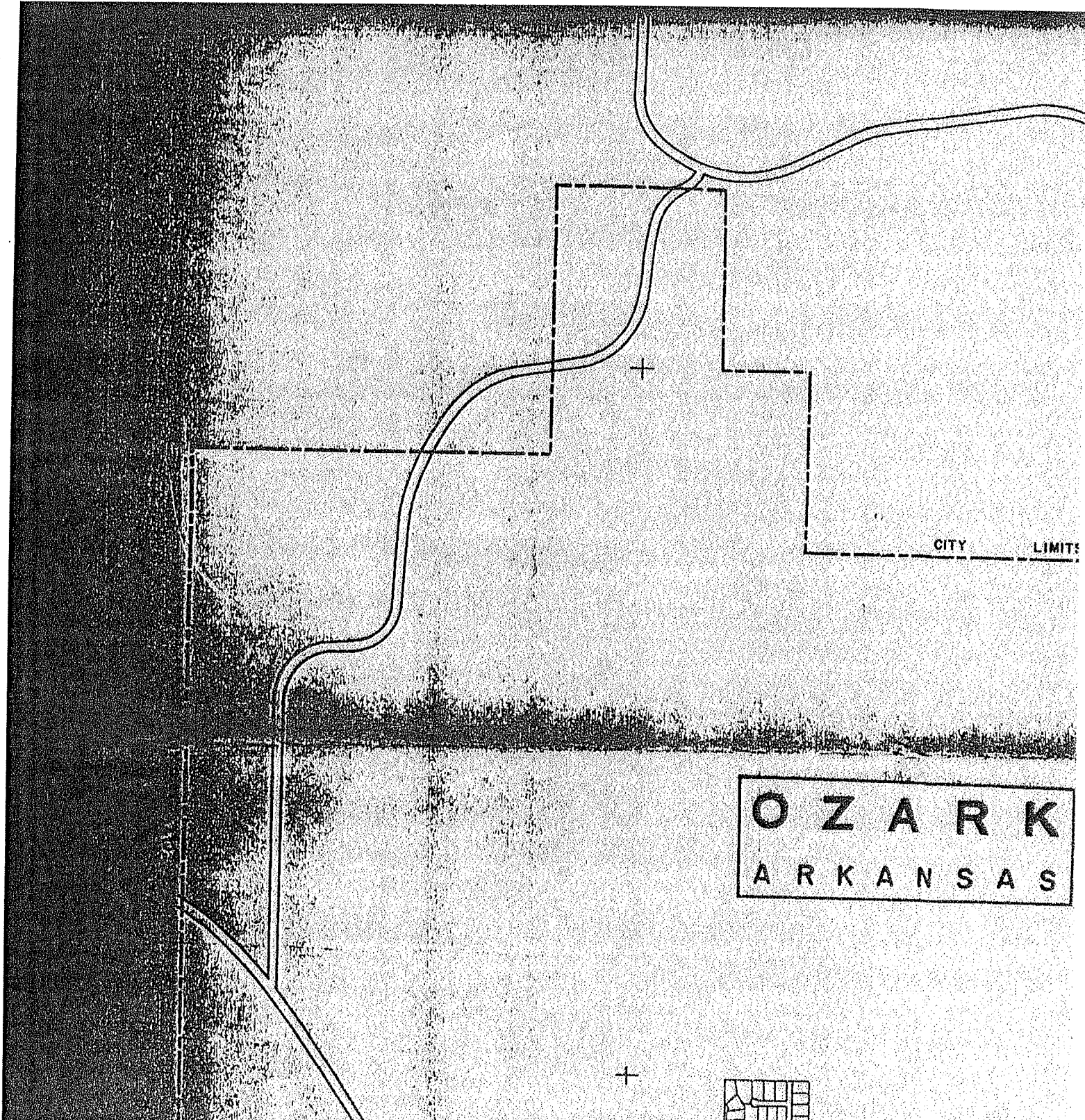
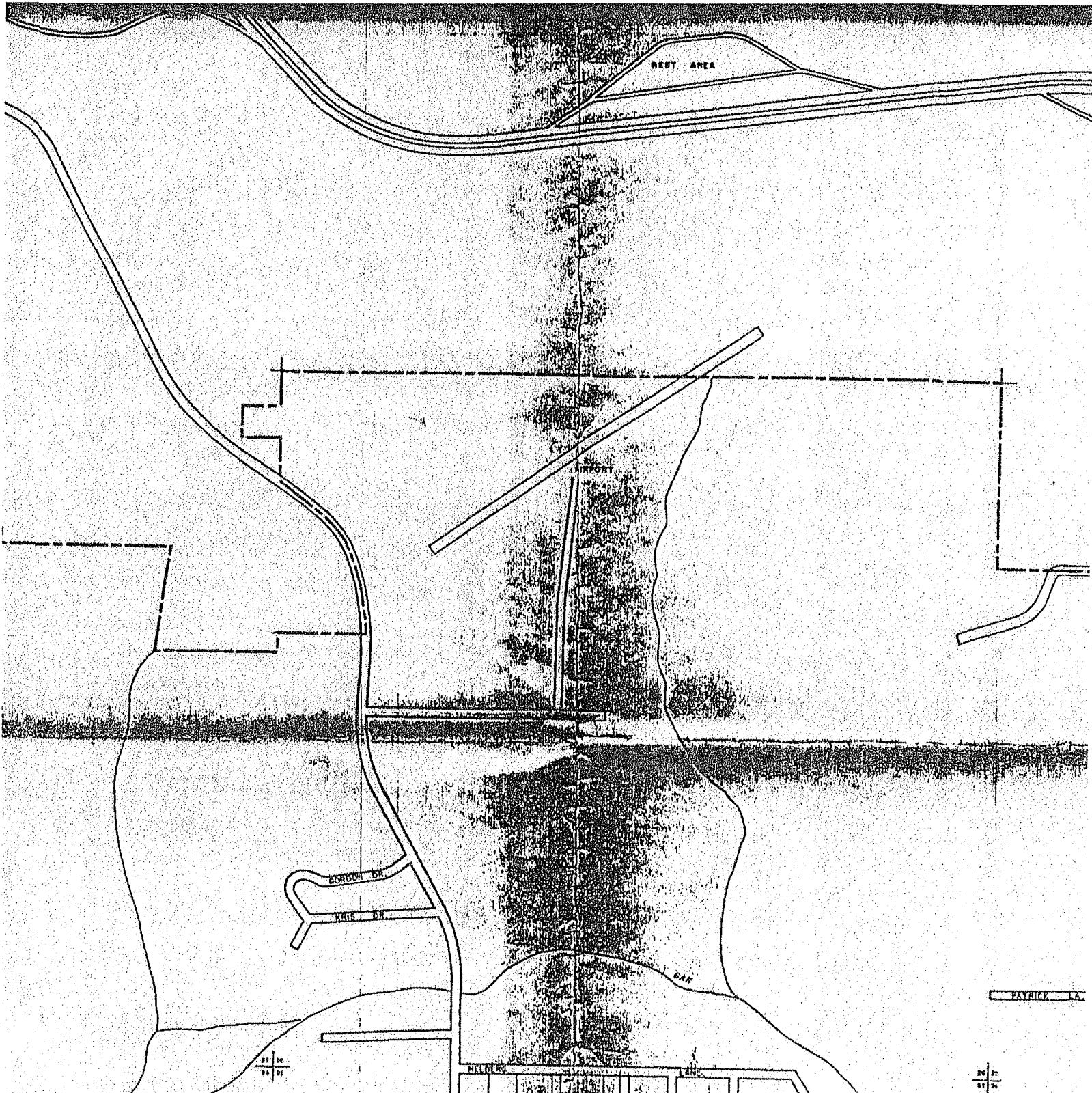
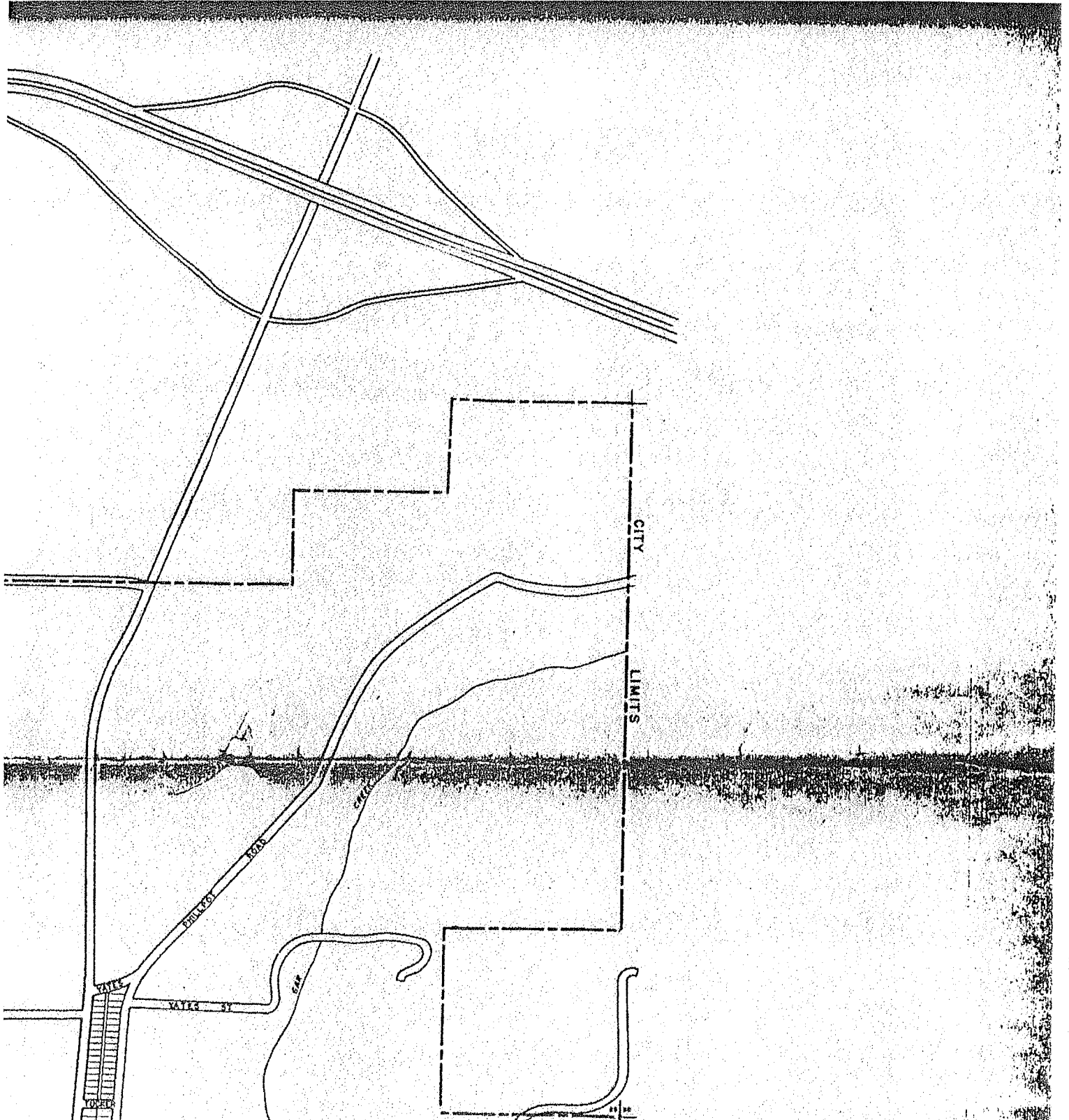


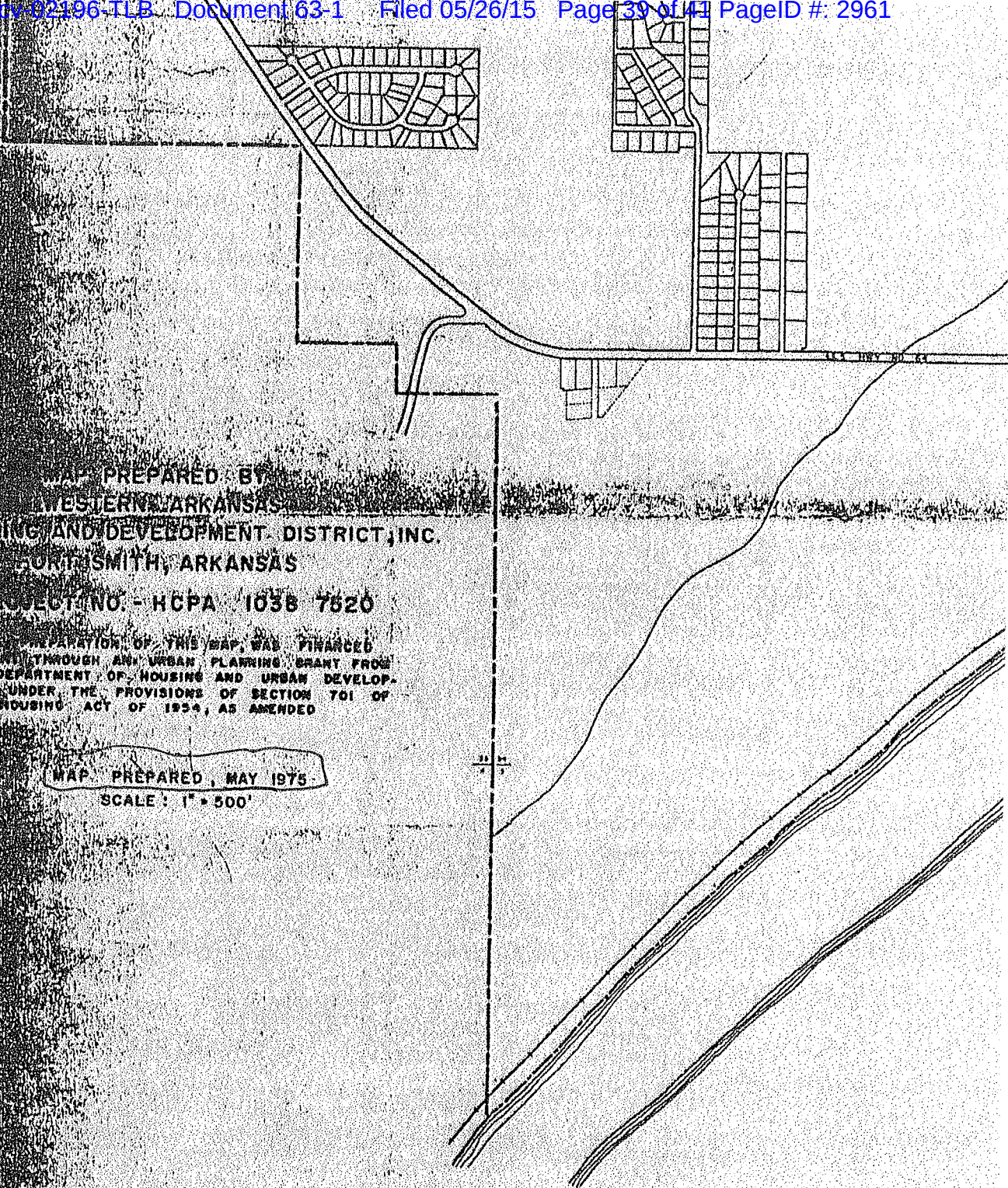
Exhibit E

A copy of the 1975 Map, pages 1-6









MAP PREPARED BY
SOUTHWESTERN ARKANSAS
PLANNING AND DEVELOPMENT DISTRICT, INC.
FORT SMITH, ARKANSAS
PROJECT NO. - HCPA 1038 7520

THE PREPARATION OF THIS MAP WAS FINANCED
IN PART THROUGH AN URBAN PLANNING GRANT FROM
THE DEPARTMENT OF HOUSING AND URBAN DEVELOP-
MENT UNDER THE PROVISIONS OF SECTION 701 OF
THE HOUSING ACT OF 1954, AS AMENDED

MAP PREPARED, MAY 1975
SCALE: 1" = 500'

