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IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2007-CA-01547

CITY OF LAUREL, MISSISSIPPI **APPELLANT**

VS.

SHARON WATERWORKS ASSOCIATION **APPELLEES**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Appellant Parties

City of Laurel, Mississippi
Mayor

Norman Gene Hortman
William S. Mullins, III
Hortman, Harlow Martindale Bassi & Robinson, PLLC
414 West Oak Street
P. O. Box 1409
Laurel, Mississippi 39441-1409

Jerry L. Mills
Pyle, Mills, Dye & Pittman
800 Avery Boulevard North, Ste. 101
Ridgeland, Mississippi 39157

Appellee Parties:

Joey Fillingane
Bustin Law Firm
109 Fairfield Drive, Suite 109
Hattiesburg, Mississippi 39402

Other Interested Parties

Tim Hancock, Esq.
Patricia Hancock, Esq.
P.O. Box 963
Jackson, Mississippi 39205

Robert Sullivan, Esq.
P. O. Box 45
Laurel, Mississippi 39441-0045

Attorney General Jim Hood
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205-0220

Honorable Charles Thomas
Senior Status Judge
Post Office Box 299
Pontotoc, Mississippi 38863-0299

Respectfully submitted this the 15th day of February, 2008.

Jerry L. Mills

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I. INTRODUCTION

This matter was previously tried in the Chancery Court of the Second Judicial District of Jones County, Mississippi with Honorable R. B. Reeves sitting as special judge. Judge Reeves entered an order granting the annexation in part and denying it in part. The City of Laurel appealed to the Mississippi Supreme Court. The Mississippi Supreme Court reversed and remanded the matter for further consideration. Judge Reeves recused himself. The new Special Chancellor heard the matter on additional briefs and modified the decision of the original Special Chancellor. He determined that the annexation of the Western area as well as the Pendorff area was reasonable. He denied the annexation of the Northern area. In reviewing the indicia of reasonableness the Special Chancellor divided the Northern area into Shady Grove and Sharon. He did not address separately the approximately 2.2 square miles of the Northern area which are currently served with water by the City of Laurel and in many cases by sewer.

II. STATEMENT OF THE ISSUES

This appeal presents three legal issues.

1. Does the poison pill provision of HB 1730 violate Section 88 of the Mississippi Constitution of 1890?

2. Once the Special Chancellor determined that the all or nothing provisions of HB 1730 were effective, did he err in failing to grant the annexation of the area to the North that lies outside the Shady Grove Utility District?

3. Did the Special Chancellor err in denying annexation of the Northern Area as a whole?

III. STATEMENT OF THE CASE

This Court accurately stated the prior history of these proceedings as follows:

> This case involves an appeal from the Second Judicial District of the Chancery Court of Jones County in which the City of Laurel petitioned to annex three parcels of land located in Jones County. The City's petition proposed three areas to be added to the City known as the Northern Parcel, the Southern Parcel and the Western Parcel. The chancellor further described the parcels as the (1) Pendorff area (Southern Parcel), (2) the Western Parcel (or Sports Complex area), (3) the Shady Grove Parcel (Northern Parcel) and (4) the Sharon Parcel (Northern Parcel). The chancery court granted the annexation as to the land known as the Pendorff area only.
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> On June 18, 1997, the City of Laurel ("the City") filed a complaint in the nature of a

petition to ratify and confirm the extension of its boundaries in the Chancery Court of Jones County, Mississippi. Honorable R.B. Reeves, Jr., senior status judge appointed to hear the case, issued a decision by letter dated January 28, 2000, to the parties that the HB 1730 Regular Session 1996, was constitutional, did not violate § 88 of the Mississippi Constitution of 1890, and that the City had 20 days to amend its complaint to comply of the provisions of Section 12 of HB 1730. [Footnote Omitted] No interlocutory appeal was sought. Judge Reeves did not issue an order as to the constitutionality of House Bill 1730. The City later amended it complaint to comply with HB 1730. HB 1730 stated:

> None of the territory lying within the district shall be subject to an Annexation by any city, town or village unless all of the territory of the district is annexed, in which event the city, town or village shall assume the operation and maintenance of the facilities of the district with respect to the payment of any outstanding bonds of the district and all other contractual obligations of the district. (emphasis added).

Therefore, HB 1730 required that either all or none of the land in a district be annexed. Consequently, the City added a remaining portion of the Shady Grove Utility District located in the Northern Parcel which increased the size of the original proposed annexation area (PAA). Thereafter on February 9, 2001, the City filed a second amended complaint. The case was heard before the Judge Reeves, between June 19, 2001 and January 4, 2002.

The chancellor filed his opinion on March 20, 2002. In his opinion, the chancellor determined that the annexation of the Pendorff area, in the Southern Parcel, was reasonable under the totality of the circumstances. However, the annexation of the other areas were not reasonable. On May 30, 2003, the chancellor signed a final judgment approving the enlargement and extension of the boundaries of the City of Laurel as to the Pendorff area only. Following the final judgement and these proceedings, the City now appeals to this Court. *City of Laurel v. Sharon Waterworks Ass'n* 918 So.2d 1269 (2005), 1270 -1271 (Miss.,2005).

The Mississippi Supreme Court found that the case should be remanded to the trial Court for further findings. The Court said:

> We vacate the chancellor's judgment and remand this case for the chancellor to clarify his findings regarding the annexation. **The chancellor's order does not specifically distinguish between all the parcels of the PAA and provide enough basis for his ruling concerning whether a specific area should be annexed.** In other words, the chancellor's ruling was vague and ambiguous. It did not set out a clear basis explaining why a particular parcel should or should not be annexed, A few of the indicia of reasonableness do have sufficient information, but as a whole, there is not enough information concerning the twelve indicia of reasonableness to make an informed determination. Therefore, this Court does not have enough information to determine whether the chancellor's reasoning and ruling as to the parcels provides substantial evidence that the annexation should be either granted or denied. *City of Laurel v. Sharon Waterworks Ass'n* 918 So.2d 1269, 1271 (Miss.,2005)

Following the remand Judge Reeves recused himself[1] and the Supreme Court appointed another Special Chancellor. The matter was briefed and the Special Chancellor heard oral arguments of the parties. No further testimony was offered.

IV. SUMMARY OF THE ARGUMENT

A. Constitutionality of HB 1730

On remand, the Special Chancellor determined that the Local and Private legislation (HB 1730) requiring annexation of all or none of the Shady Grove Utility District was not unconstitutional. The City of Laurel contends that he erred. As a matter of law this Court should review the matter de novo.

The passage of local and private legislation (HB 1730) altered the general annexation laws passed by the legislature. HB 1730 contains a "poison pill" provision[2] which requires the City of Laurel to annex all or none of the Shady Grove Utility District. This provision imposes, by local and private legislation a condition on annexation by the City of Laurel in violation of *Article 4 Section 88 of the Mississippi Constitution of 1890.* The Constitution provides:

> The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

This Court has held this provision applies to the laws related to annexations. Any question as to whether *Section 88* prohibited local and private enactments related to annexation was settled in *City of Pascagoula v. Krebs,* 118 So. 286, 151 Miss. 676, (Miss. 1928).

B. Reasonableness

Originally the City of Laurel was granted only the Pendorff area. On remand, without further proof, the Special Chancellor determined that it was error not to grant the City of Laurel additional

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[1] See Record Except on Remand (ROR) 4, R-28

[2] The inclusion of substantial agricultural and undeveloped lands make it practically impossible to prove a number of elements of reasonableness. Prime among then are the need for services and financial ability. In effect by local and private legislation requiring all or nothing annexation may be effectively precluded.

territory. The new Special Chancellor reversed the decision originally rendered finding that the annexation of the Western Area was reasonable. After finding that HB 1730 was constitutional and required annexation of all or nothing within the Shady Grove Utility District, the Special Chancellor failed to specifically address a 2.2 square mile area in the Northern Area which was not within the district.[3] The area in question is served by water by the City of Laurel. Additionally Laurel serves sewer to a large number of the land uses in this area.

The City of Laurel submits that the denial of areas of the annexation except Pendorff area and the Western area was manifestly erroneous. Likewise it is the position of the City of Laurel that the granting of the Pendorff area, without balancing with other areas sought by the City was manifest error. The City recognizes the limitations on the scope of review in annexation cases.[4] With full understanding that this Court reverses a Chancellor's findings only when manifestly wrong, Laurel submits that such a case is before the Court. The new Special Chancellor recognized the gravity of the error of the original Special Chancellor demonstrated by his decision to deny the annexation of the City's multi-million dollar recreation complex. He failed, however, to apply the same reasoning to other areas north of the City, but outside the Shady Grove Utility District. When measured against the evidence presented, one cannot help but be left with a firm and definite conviction that a mistake has been made. The newly appointed Special Chancellor corrected a part of the original error but did not go far enough. The evidence clearly establishes that the annexation proposed by the City of Laurel is reasonable.

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[3] The Special Chancellor addressed a separate area in the Northern District – Sharon. None of the 2.2 square mile area north of Laurel was in the Sharon area nor the Shady Grove Utility District.

[4] This Court's standard of review is very limited. The Court can only reverse the Chancery Court's findings as to the reasonableness of an annexation if the chancellor's decision is manifestly wrong and is not supported by substantial and credible evidence. *Hattiesburg,* 588 So.2d at 819. We also stated "[w]here there is conflicting, credible evidence, we defer to the findings below." *Bassett v. Taylorsville,* 542 So.2d 918, 921 (Miss.1989). "Findings of fact made in the context of conflicting, credible evidence may not be disturbed unless this Court can say that from all the evidence that such findings are manifestly wrong, given the weight of the evidence." *Bassett,* 542 So.2d at 921. "We only reverse where the Chancery Court has employed erroneous legal standards or where we are left with a firm and definite conviction that a mistake has been made." *Id .In re Exclusion of Certain Territory from City of Jackson* 698 So.2d 490, 493 (Miss.1997)

V. ARGUMENT

A. CONSTITUTIONALITY OF HB 1730

On remand the Special Chancellor specifically ruled on the constitutionality of the local and private legislation which required the City of Laurel to annex all or none of the Shady Grove Utility District. The City of Laurel respectfully submits that his decision supporting the constitutionality of this section was error. The proper standard of review is set out as follows:

> When confronted with rulings on questions of law, the deferential "manifest error/substantial evidence" rule which is ordinarily applied is not proper. *In re Extension of Boundaries of City of Hattiesburg,* 840 So.2d 69, 77 (Miss.2003). *In re City of Laurel* 863 So.2d 968, 971 (Miss.,2004)

The City of Laurel respectfully submits that this Court should find the "poison pill" provision of House Bill 1730 is unconstitutional. In 1996 the Mississippi Legislature adopted *H.B. 1730.*[5] This legislation created the Shady Oaks Utility District. Section 12 of the local and private act provides as follows:

> None of the territory lying within the district shall be subject to annexation by any city, town or village unless all the territory of the district is so annexed, in which event the city, town or village shall assume the operation and maintenance of the facilities of the district and all obligations of the district with respect to the payment of any outstanding bonds of the district and all other contractual obligations of the district.

This provision violates *Article 4, Section 88 of the Mississippi Constitution of 1890.* Acting in accordance with the mandate of *Section 88,* the Mississippi legislature first enacted general laws related to the incorporation of and annexation by municipalities in 1892. Over the years, changes were made until the enactment of the present legislation dealing with annexation in 1950.[6] Prior to 1892 municipalities were granted legislative charters setting out their powers. Legislation followed the adoption of *Section 88*, which created code charters.[7]

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[6] *Laws of 1950, ch. 491, Miss. Code of 1972* §21-1-1 et seq.

[7] The option was granted to allow municipalities having specific charters to retain them. As a result there are still a number of "Special Charter" municipalities in the state. Laurel on the other hand is a "Code Charter" municipality.

Section 88 of the Mississippi Constitution of 1890 contains the following mandate:

> The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered **and their charters amended**, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment. [Emphasis Added]

The power to amend municipal boundaries is within the purview of this provision. See *City of Pascagoula vs. Krebs*, 151 Miss 676, 118 So. 286 (1928).[8] In an early case involving section of the Constitution this Court said:

> . . . we have recently decided that section 88 of the Constitution was a command to the Legislature to devise some general plan of easy operation under which municipalities might be chartered, or their charters amended so as to render resort to the lawmaking power in each instance unnecessary. *Yazoo City v. Lightcap* (to be officially reported) 33 South. 949; *Adams v. Kuykendall* (to be officially reported) 35 South. 830; *City of Jackson v. Whiting* 36 So. 611, 612 (Miss. 1904).[9]

Section 88 applies to laws related to municipal annexation. The legislature's most recent compliance with the mandate[10] to enact uniform general laws[11] related to annexation came in 1950 with the adoption of those laws contained in Title 21, Chapter 1 of the Mississippi Code of 1972. More recently this point was addressed by this Court as follows:

> Under § 88 of our State Constitution the legislature is given the power to control the creation and organization of municipalities. Section 88. The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to amendment. Miss. Const. of 1890, Art. 4, § 88.

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[8] This case established that the alteration of municipal limits is clearly an alteration of the municipal charter and thus covered directly by the mandate of Section 88.

[9] *Gambrill v. Gulf States Creosoting Co. 216 Miss. 505, , 62 So.2d 772, (Miss.1953)*

[10] The dictate of Section 88 is mandatory. See *Monette v. State* 91 Miss. 662, 44 So, 989, 124 Am St. Rep. 715 (1907) (reversed in part on other grounds).

[11] In *Yazoo City v. Lightcap* 82 Miss 148, 33 So. 949 (1903) the Court discusses the history of Section 88 is some detail to reach the conclusion that the section requires the passage of uniform general laws prescribing the mode by which municipal charters are to be granted and amended as opposed to requiring that such laws contain the entire contents of the amendment. A specific example that was used by the Court in that case relates to the expansion of municipal boundaries as a charter power. This case is one of a number in a line of cases that have upheld the authority of the legislature to adopt local and private legislation on specific powers of a municipality that are unrelated to the charter itself. See also *Brandon v. City of Hattiesburg,* 493 So.2d 324, (Miss.,1986)

> Beginning with Section 2913 of the Mississippi Code of 1892, the legislature took advantage of the authority given to it by Section 88 of the Constitution by establishing a statutory procedure for the expansion or contraction of municipal boundaries. That provision and subsequent modifications of the State Code provided that appeals from municipal ordinances contracting or expanding city boundaries were to be made to the *circuit court.* In 1950, the legislature changed the forum. With the adoption of § 3374-12 of the Mississippi Code (1942), the legislature presented the state with our modern scheme of realizing municipal growth. The entire process is now embodied in §§ 21-1-27 through 21-1-41 Miss.Code Ann. (1972).*Western Line Consol. School Dist. v. City of Greenville* 465 So.2d 1057, 1058 -1059 (Miss.,1985)

HB 1730 is a direct violation of Section 88. General legislation is required on the subject of annexation. The poison pill – annex all or nothing - imposes, by local and private legislation, additional requirements on the City of Laurel in seeking annexation. The act prevents the governing officials from exercising their legislative authority to choose the territory which will be proposed for annexation. It attempts to prevent the Chancellor from exercising his statutory and Constitutional authority to deny the portion of the annexation that he deems unreasonable. It violates the fundamental constitutional directive that such provisions only be undertaken by general legislation, which permits the municipality to exercise its legislative authority to define the boundaries of the area subject to the Chancellor's authority to reduce the area by excluding portions of property found to be unreasonable utilizing a review of the factors of reasonableness mandated by this court and guided by the general principals of fairness to the municipality as well as the residents and property owners that are sought to be annexed.

Under local and private acts non-uniform annexation requirements are imposed. Laurel is hamstrung by a provision of the local and private act in total disregard for the municipality's legislative authority and the Chancellor's judicial authority under the general annexation law. The ruling of the Special Chancellor would open the door for a hodge podge of limitations on the charter powers of municipalities by local and private laws. The uniformity sought by the constitution stands to be eliminated by imposing localized restrictions.

The general legislation adopted in Mississippi empowers the annexation of "adjacent unincorporated territory". See Section 21-1-27.[12] With regard to which such territory a municipality will annex, the law is clear. "This Court has further stated "our law gives municipalities the discretion, based on convenience and necessity, to choose between various paths of growth by annexation." *Ritchie v. City of Brookhaven,* 217 Miss. 860, 65 So.2d 436, 439 (1953). *In re Enlargement and Extension of Municipal Boundaries of City of Clinton* 955 So.2d 307, 318 (Miss.,2007) The only limitation contained within the general law is that adjacent territory be unincorporated. HB 1730 requires Laurel, and no other city in the State, to annex substantially more land than the City would have sought if annexation were permitted to take place under the uniform general legislation adopted to govern municipal expansion. While faced with the requirement to annex too much territory, the City of Laurel has the burden to prove such an annexation reasonable. Unlike any other annexation, the Chancellor cannot reduce the area within the Shady Grove Utility District.[13]

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[12] Laurel suggests that this provision is substantive rather than merely procedural.

[13] In the only litigated annexation case of which counsel is aware involving this issue is the recent Gautier annexation. That case was appealed to this Court but dismissed before a decision. However certain of the factual details were set out by this Court in a related appeal. The Court noted:

> The City of Gautier filed a complaint for annexation, including the territory of the Gautier Utility District (GUD) on August 30, 1999. The Jackson County Chancery Court, Special Chancellor Donald Patterson, found that the annexation was reasonable. Kenneth Peden, Sr., a duly elected Commissioner of the GUD, filed several post-trial motions, including (1) a Motion For Injunctive Relief and Motion For Declaratory Relief and (2) a Motion for New Trial. The first motion was withdrawn by Peden. The second motion was denied. An appeal was filed by Brian Britt to this Court, which this Court dismissed. *Britt v. City of Gautier,* No. 2000-AN-01129-SCT.
>
> In a separate and subsequent action commenced in the Jackson County Chancery Court, Peden filed a Motion For Injunctive Relief and Motion for Declaratory Relief, identical to the motion withdrawn in the annexation case. That motion was filed pro se and reflected that Peden was an elected commissioner of the GUD. In essence, the motion sought an injunction preventing the "proposed assumption of the GUD by the City of Gautier" because of violations of (1) Miss.Code Ann. § 21-27-7 for failure to conduct an election; (2) Local and Private Law Chapter No. 923, H.B. 1376, dated 1987, and Chapter 831, H.B. 1641, dated 1991, for failure to conduct an election and to submit the matter to the U.S. Attorney General; (3) H.B. 1641 because an area known as "Grasshopper Point" was exempted; and (4) H.B. 1641, Section 100 of the Constitution of the State of Mississippi, and Miss.Code Ann. §§ 19-5-151 et seq. for failure of the chancellor to make provision for or a finding relating to the assumption of the GUD. *Peden v. City of Gautier* 870 So.2d 1185, 1186 (Miss. 2004).

In that case the Chancellor did exercise his discretion to delete the area known as Grasshopper Point and other

There is an irreconcilable difference between the provisions of the local and private and the general law.[14] General Law permits the Chancellor the discretion to reduce the territory annexed[15]. The local and private require all or nothing. While the Chancellor in *Gautier* avoided the necessity to declare the inconsistent local and private to be unconstitutional such a solution is less than desirable. In Laurel a whole new territory was added. The record is clear that the local and private legislation resulted in a substantially larger area being included within the City's annexation effort. Trial was extended substantially. To require larger than reasonable annexations violates the letter and the spirit of the state's general annexation law which is rooted in the principals of equity and fairness to the municipality and the affected property owners. Residents and property owners who would not otherwise be impacted are unfairly drawn into the litigation.

The Supreme Court dealt with an attempt to amend municipal boundaries long ago. The Court said:

> We cannot lend our approval to the passage by the Legislature of local acts to amend charters of municipalities so long as section 88 remains in the Constitution. *City of Pascagoula v. Krebs* 118 So. 286, 290 (Miss. 1928)

As of today, Section 88 remains in the Constitution. We ask this Court to enforce it. In this case the holding of the lower court allows the legislature by local and private act to alter the charter power of the City of Laurel to amend its boundaries.

In failing to apply theses principles the Special Chancellor made a number of specific mistakes of law. First he has concluded that the statutes dealing with annexation are procedural only. Laurel disagrees. Section 21-1-33 sets out the substantive standard by which annexations are to be judicially determined – reasonableness. Section 21-1-27 clearly defines the territory that may be annexed by a municipality – "adjacent unincorporated territory". Both are matters of substance

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portions of the annexation area which were a part of the Gautier Utility District. The Gautier Utility District was formed under the similar local and private legislation. While we do not contend that the dismissed appeal stands as *stare decisis* it does demonstrate a substantial conflict which arises when the very local and private act now before the Court is considered.

[14] Contrary to the opinion of the Special Chancellor, the City of Laurel does not contend that the prohibitions of Section 87 limit the passage of Local and Private laws related to annexation. Clearly

rather than procedure.

In the citations in the lower court's opinion, it appears that the Special Chancellor may have misapprehended the position of Laurel. Laurel does not contend that the legislature does not have the power to control the affairs of municipalities. It is the position of Laurel that Section 88 controls the manner in which the legislature controls the law with regard to annexation. The legislature has full power to pass "general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered ***and their charters amended***". In this case local and private legislation has been adopted which provides for the manner in which Laurel may annex (amend its charter). The all or nothing provision of HB 1730 should be declared unconstitutional.

B. REASONABLENESS

1. The Chancellor Was Manifestly Wrong Deleting All Areas Sought to Be Annexed

On remand the Special Chancellor rectified one of the glaring errors of his predecessor. Additionally he set out more detail on each particular parcel. Still a glaring error remains. The Special Chancellor analyzed the Northern area as though the entire parcel lay within the boundaries of the Shady Grove Utility District. Applying the reasoning and findings of fact applied in the opinion on remand, one can only be "left with a firm and definite conviction that a mistake has been made." *Id. Deannexation of City of Grenada v. Marascalco,* 876 So.2d 995, (Miss.,2004).

The existing City of Laurel occupies 15.8 square miles. According to the 2000 census the population was 18,393 of which 7,474 (40.6%) were white and 10,919 (59.4%) were non-white. There were 8,341 dwelling units in the existing city according to the 2000 census. The population density of the existing city was 1,164 persons per square mile in 2000.[16]

The Ordinance before the Court seeks to annex property consisting of approximately 17

[16] See Exhibit L-27 (Demographic Data Sheet) RE-172

square miles. (Exhibit 27, RE - 172).[17] The area sought to be annexed is divided into a northern area, two western parcels and a southern area. The northern area includes areas commonly called the Shady Grove area[18] and the Sharon area.[19] In addition the Shady Grove area was sometimes referred to as the original and the enlarged areas. In the west, the City of Laurel's new park facility is located. The Southern area is known as the Pendorff area. The total area sought to be annexed is occupied by 2,644 residential units.[20] 6,151 people live in the proposed annexation area.[21] Much of the PAA is largely built out. Other portions of the proposed annexation area are less developed and will provide the vacant land that Laurel needs for future development.[22]

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[17] The area originally sought to be annexed contained 10.9 square miles. (Exhibit 26) RE-171

[18] All but approximately 2.2 square miles of the area referred to as the Shady Grove area are within the Shady Grove Utility District. 2.2 square miles of this area immediately north of the City of Laurel are not in the utility district.

[19] From an annexation standpoint there is little logical reason to distinguish among the northern area except that they were represented by different counsel. As one gets further from the City development lessens in all areas. If any of the area could be classified as rural it would be the floodplain area in the original annexation area and the some of the area in the Northern Shady Grove area.

[20] The area originally sought to be annexed contained 2,194 dwelling units. (Exhibit 26) RE-171

[21] The area originally sought to be annexed contained 4,974 persons. Both the proposed annexation area and the original annexation area contain more people than resided in the approximately 33 square miles the Supreme Court recently approved for annexation in the City of Biloxi. *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So.2d 270 (Miss. 1999). It has more than seven (7) times the number of people who lived in the area recently sought to be annexed by the City of Batesville. *The Matter of the Extension of the Boundaries of Batesville,* 760 So.2d 697 (Miss. 2000) [18.23 square miles, and would increase the population by over 800 residents.]

[22] The City presented evidence that the reasons for annexation varied between the areas. The more populated areas have stronger needs for municipal services immediately. On the other hand the less developed areas will provide for future growth. They currently are in need of proper planning and zoning to avoid the problems so prevalent in the Pendorff area. The argument was made that the less developed areas should not be annexed. However, the proposal of the City of Laurel is consistent with the prior rulings of the Mississippi Supreme Court on the issue of reasonableness.

In the recent Biloxi case the Mississippi Supreme court found that there was a need for vacant developable land to accommodate future growth. *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 , (Miss. 1999). See also *Enlargement and Extension of Mun. Boundaries of City of Meridian v. City of Meridian,* 662 So.2d 597, 601 (Miss. 1995) *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, (Miss. 1995)

In *Dodd v. City of Jackson* 118 So.2d 319, 330 238 Miss. 372, (Miss. 1960) the Supreme Court announced the rule which has been followed for the last 40 years:

> There is much merit in the theory of overall planning, namely, where it can be reasonably anticipated that a certain area will become a part of a city in a reasonable time, it is better to take it in and develop the same properly and wisely, with particular reference to a uniform system for securing water, the development of streets, and the collection and disposal of sewage and waste, rather than to let the area develop in a harum-scarum manner as each builder or developer may determine. Instances of the lack of uniform planning in laying out streets, water lines, and sewage disposal in the towns and cities can be seen on every hand. It must be borne in mind too that the final decree in fact excluded a large part of the territory in Area 13.

Over the years, the Mississippi Supreme Court has recognized a numbers of indicators or indicia of reasonableness. Recently, the Court said:

> In a series of cases beginning with *Dodd,* 238 Miss. at 396-97, 118 So.2d at 330, including *McElhaney,* 501 So.2d at 403-04, and *City of Greenville v. Farmers, Inc.,* 513 So.2d 932, 941 (Miss.1987), this Court has recognized at least eight indicia of reasonableness. These are (1) the municipality's need for expansion, (2) whether the area sought to be annexed is reasonably within a path of growth of the city, (3) the potential health hazards from sewage and waste disposal in the annexed areas, (4) the municipality's financial ability to make the improvements and furnish municipal services promised, (5) the need for zoning and overall planning in the area, (6) the need for municipal services in the area sought to be annexed, (7) whether there are natural barriers between the city and the PAA, and (8) the past performance and time element involved in the city's provision of services to its present residents.
>
> Other judicially recognized indicia of reasonableness include (9) the impact (economic or otherwise) of the annexation upon those who live in or own property in the area proposed for annexation; *Western Line,* 465 So.2d at 1059, (10) the impact of the annexation upon the voting strength of protected minority groups, *Yazoo City,* 452 So.2d at 842-43, (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and for the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy the (economic and social) benefits of proximity to the municipality without paying their fair share of the taxes, *Texas Gas Transmission Corp. v. City of Greenville*, 242 So.2d 686, 689 (Miss.1971); *Forbes v. City of Meridian,* 86 Miss. 243, 38 So. 676 (1905); and (12) any other factors that may suggest reasonableness vel non. *Bassett,* 542 So.2d at 921. More recent cases have also relied upon these twelve factors. *In re Enlargement & Extension of the Mun. Boundaries of the City of Madison, Mississippi: The City of Jackson, Mississippi v. City of Madison,* 650 So.2d 490 (Miss.1995) (hereinafter, *Madison* "); *In re Extension of the Boundaries of the City of Columbus,* 644 So.2d 1168 (Miss.1994) (hereinafter, *Columbus* ").
>
> *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 , (Miss. 1999)

The indicia of reasonableness are not separate and independent test. Rather, they are indicators which are useful in determining the reasonableness of an annexation under the totality of the circumstances.[23]

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[23]*Bassett v. Town of Taylorsville* 542 So.2d 918, 922 , (Miss. 1989) the Mississippi Supreme Court changed the terminology from "criteria of reasonableness" to "indicia of reasonableness". In doing so they stated:

> In the end, the Chancery Court is charged to determine whether under the totality of the

The standard by which the decision of the Chancellor is reviewed is "manifest error". This Court has recently reaffirmed this longstanding principle:

> The Court can only reverse the chancery court's findings as to the reasonableness of an annexation if the chancellor's decision is manifestly wrong and is not supported by substantial and credible evidence. *In re Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison,* 650 So.2d 490, 494 (Miss.1995). We also stated "[w]here there is conflicting, credible evidence, we defer to the findings below." *Bassett v. Town of Taylorsville,* 542 So.2d 918, 921 (Miss.1989). "Findings of fact made in the context of conflicting, credible evidence may not be disturbed unless this Court can say that from all the evidence that such findings are manifestly wrong , given the weight of the evidence ." *Id.* at 921. "We only reverse where the Chancery Court has employed erroneous legal standards or where we are left with a firm and definite conviction that a mistake has been made." *Id. Deannexation of City of Grenada v. Marascalco,* 876 So. 2d, 995, (Miss.,2004)

A review of the evidence in this case and the opinion of the Chancellor leads to "a firm and definite conviction that a mistake has been made. The decision below is manifestly wrong.

C. THE CHANCELLOR'S GRANT OF A MODIFIED AREA

Mississippi's annexation statutes give the chancellor "the right and the power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from such municipality, as the case may be" based on the evidence presented. [24] Like all decisions of the Chancellor, such a decision must be based on substantial credible evidence. In this case, the Chancellor was manifestly wrong in limiting the approved portion of the annexation to the Pendorff area. On remand, the new Special Chancellor recognized this error and expanded the territory approved for annexation by the City of Laurel. In analyzing the correctness of the Chancellor's opinion it is important to consider the characteristics of the areas sought to be annexed.

> circumstances the annexation (or any part thereof) is reasonable, having due deference to the interests of the municipality and, as well, the interests of the parties affected. *City of Greenville v. Farmers, Inc.,* 513 So.2d at 941-42.

This standard has consistently been applied since that time in annexation cases. "These factors have since been applied consistently by this Court. See e.g. *In re Extension of Corporate Boundaries of Mantachie,* 685 So.2d 724, 726-29 (Miss.1996)." *In re Exclusion of Certain Territory from City of Jackson,* 698 So.2d 490, 493 (Miss. 1997)

[24] Miss. Code Ann. § 21-1-33. It should be noted that the provisions of HB 1730, if applied removes this power in the present annexation.

Original Annexation Area – This is the area that the City of Laurel initially sought to annex. See Exhibit L-51, RE –759. It consisted of the Laurel Sportsplex (owned by the City of Laurel),[25] the Pendorff area,[26] the western area[27] and an area to the north of the City of Laurel. The total territory in the original annexation area consisted of 10.9 square miles. The population density was 457 persons per square mile.[28] It had a population in 2000 of 4,974 people. Of this number 691 lived in the Pendorff area. 98 lived in the Laurel SportsPlex, one hundred twelve (112) lived in the Western Area (North) and the balance, lived in the remainder of the area (The Northern area including portions within Shady Grove Utility District)[29].

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[25] **Laurel SportsPlex Area** - This area is included the Laurel SportsPlex, owned by the City of Laurel. It is the City's primary recreational area. It includes numerous soccer and baseball fields and a large indoor natatorium. The City expended 3.7 million dollars on a natatorium on this development. It is located to the west of the existing city along US Highway 84 and is already served by public water and sewer. There were two single family residences, one church, an eight unit multi-family residence three businesses and thirty three mobile homes in the area. The population of the area is approximately 98. The land area is approximately one square mile. The population density is approximately 98 persons per square mile. The Laurel SportsPlex itself is adjacent to the City and could have been annexed taking no people or property not owned by the City of Laurel. See Exhibit L-51, RE-759.

[26] **Pendorff** – This area lies to the South of the City of Laurel. It occupies approximately 1.5 square miles and had a 2000 population of 691 persons. The population density in the Pendorff area is 460.6 persons per square mile. Of this total 22 are African American. This represents 11.2% of the population of the Enlarged Annexation Area. The Pendorff population represents 13.9% of the Original Annexation Area. More significantly, given the finding of the Chancellor, Pendorff is only 3.2% African American. Pendorff represents 1.5% of the African American population within the original annexation area and 1.3% of the African American population of the Enlarged Annexation Area. The area is served by water from the City of Laurel but has no central sewer. The predominant land use is older low to moderate single family housing. There are approximately 56 businesses in the area. See Exhibit L-52 RE –76

[27] **Western Area (North)** – There are 37 single family residences, one church, 13 mobile homes and four businesses. The population is approximately 112. The land area is approximately one half square mile. The population density is approximately 224 persons per square mile.

[28] Exhibit L-26 RE-171

[29] **North Shady Grove Area** consisted of 6.1 square miles. It had a population of 1,177 persons. The population density of the North Shady Grove Area was 193 persons per square mile. [T-1693] Much of the northern Shady Grove Area is in agricultural usage.

Original North Area – The area to the north originally sought to be annexed consisted of 7.9 square miles. The population of this area was approximately 4073 persons in 2000.[29] This amounts to just over 515.5 persons per square mile. The area included a mix of land uses. There were at least 16 multi-family housing developments containing 651 apartment units in this area.[29] The Greater Laurel Industrial Park is located in this area. Other uses include:

Southeastern Baptist College
Shady Grove Elementary School
Mississippi Baptist Children's Home
Shady Grove Volunteer Fire Station
Prator Community Center
Shady Grove Utility Office
Two elevated water towers

Enlarged Annexation Area – This is the area that was described in the City of Laurel's amended annexation area. (Exhibit L-52 RE-760) Because of the provisions of the Local and Private Legislation, HB 1730 the area Laurel sought to annex was expanded form 10.9 square miles to 17 square miles. The area added to the annexation all lies north of the original annexation area and is often referred to in the record as the North Shady Grove area. The Enlarged Annexation Area had a population in 2000 of 6,151 persons. The population density was 362 persons per square mile.[30]

THE NORTHERN AREA OUTSIDE SHADY GROVE UTILITY DISTRICT

The record in this case reveals that approximately 2.2 square miles of the Northern Area lay immediately adjacent to the City of Laurel (This territory did not include any of the Shady Grove Utility District nor the Sharon Area.)[31] (SEE MAP ATTACHED AS APENDIX A) The opinion of the Chancellor does not speak to this separate area. Rather he treats the Northern Area as Shady Grove and Sharon. Under the standard being applied by the Chancellor – that is that the local and private required the annexation of all or nothing within the utility district, this area should have been considered separately. In this case the City of Laurel had presented evidence in a manner which allowed such a review. An examination of the undisputed evidence regarding the area north of Laurel but outside the Shady Grove Utility District reflects that there were 113 Mobile Homes, 492 Single Family Homes, 458 Multifamily Units for a total of 1,063 total living units.[32] Based on

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Nine (9) Churches
Mississippi Department of Transportation Offices
More than Seventy Businesses
Bell South Telephone Offices
At least six mobile home parks
At least six platted subdivisions with well over two hundred houses
Numerous unplatted subdivisions, single family residences and mobile homes

It is important to note that the development in the North Area is concentrated along and either side of U.S. Highway 11. A large flood plain to the west has severely limited development in that direction.. In reality, the concentration of development is severely understated if the flood plain is included in the 7.9 square miles of this area. See Exhibit L-29 RE - 174. In addition much of the area is served with both water and sewer by the City of Laurel. See Exhibit L- 1 (RE-922) and L-2 (RE-141).

[30] Exhibit L-27 RE-172

[31] T-4, T-12

[32] See Existing Land Use Map

population per households, it is estimated approximate 2392 persons lived in this area.[33] In addition there were 42 commercial or industrial uses in this 2.2 square mile area at in 1999 when the existing land use survey was done.[34]

Most the area is already provided with water by the City of Laurel and much with sewer. See Appendix A.

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[33] This translates to a population density of 1087 persons per square mile.

[34] See Existing Land Use Map See also T-14

The number by name of business corresponds to land use map.

36. Lyon Photo
37. AAA Growers & Nursery
38. Foster Self Defense Academy
39. The Diamond Connection
40. McMurry Pest Control
41. EZ Money
42. Southeastern Funding
43. R & R Rentals
44. Electric Tanning Salon
45. McMurry Mini Storage
46. Colonial Chapel Funeral Home
47. Starr Manufactured Homes
48. Unknown Business
49. Sanford Auto Sales & Body Shop
50. M & M Trailer Fabrication
51. Sensations Tanning Salon
52. Edward's Services
53. Houston Processing Plant
54. Unknown Auto Repair
55. Sharon Satellite & TV
56. Unknown Business
57. The Associates Freight Co.
58. Johnston Marine Co.
59. Vacant Auto Parts Store
60. A.C. Delco Auto Parts Store
61. Sharon Grocery
62. Wheeler Auto Sales
63. Doris Tanner Flowers
64. Vacant Business
65. A & B Automotive
66. John Deere Tractor
67. Garden Mini Warehouses
68. Unfinished Furniture Warehouse
69. Self Storage
76. City Refrigerator, Inc.
77. Laurel Rent-All
79. Roy Rogers Body Shop
80. Unknown Business
81. Unknown Business
82. Unknown Business
83. Southern Wholesale Furniture
84. B & B Muffler Repair

A review of the opinion of the Special Chancellor makes it clear that once he determined that HB 1730 required an all or nothing approach he ignored the 2.2 square miles of the Shady Grove area that is not in the Shady Grove Utility District. In doing so his findings and conclusions with regard to the area is flawed. He describes his approach as follows:

> In balancing the *Macon* factors, this Special Chancellor finds that the City of Laurel's need to annex the Shady Grove parcel is not reasonable. Only the "Spillover Growth", "Need to Maintain and Expand City's Tax Base", and "Limitations Due to Geography and Surrounding Cities" factors were found to support the City's need to annex the Shady Grove parcel. **It is important to note that the resolution of the constitutional issue (H.B. 1730) and the enlargement of the Shady Grove parcel to include the northern area of the Shady Grove Water District significantly shifted many of the *Macon* factors away from supporting the City's need to annex the Shady Grove parcel.** [Emphasis Added]

Since the 2.2 square miles was in the Shady Grove area but not in the Shady Grove Utility District and thus not impacted by HB 1730 this shift was clearly improper. Laurel submits that a proper analysis of the need for expansion of the 2.2 square miles would lead to the conclusion that its annexation was reasonable considering the totality of the circumstances. Addressing each of indicia as it relates to this area the record reveals:

1. As noted above the Special Chancellor acknowledged the significance of the impact of his interpretation of HB 1730. We respectfully submit that the analysis of the **need for expansion,** discussed infra could not have logically differed with regard to this 2.2 square miles and the Pendorff or Western areas.

2. As the opinion of the Special Chancellor found that the larger Shady Grove area was in Laurel's **path of growth**, it is inconceivable that any other finding could have been made with regard to the smaller 2.2 square mile tract.

3. With regard to the existence of existing or **potential health hazards** the evidence was undisputed that Laurel already served many of the homes and businesses in the 2.2 square mile area with sewer. This is a factor by which this Court has never penalized a municipality seeking to annex.

4. With regard to **need for municipal services** the Special Chancellor attributed importance

to the fact that there had been testimony that the Pendorff area was the most densely populated parcel.[35] Likewise he pointed out the rural nature of much of the rest of the northern parcel. It is true that as originally configured Pendorff was the most densely populated area at 460.6 person per square mile. However if the Shady Grove Utility District is removed from the Shady Grove parcel the remaining 2.2 square miles becomes by far the most densely populated territory sought to be annexed. With a population density of 1087 persons per square mile this area approaches the density of the existing city. This Court has often recognized that increasing population density indicates a need for municipal level services.

It is noteworthy that in finding a need for services in Pendorff the Special Chancellor found it important that Laurel was already providing water. Likewise Laurel is providing water in the 2.2 square mile area. In addition Laurel is providing significant sewer service.

5. The opinion of the Special Chancellor makes it clear that he did not consider the issue of **need for planning and zoning** except in the all or nothing context of HB 1730. He stated:

> When considering this factor on a parcel-by-parcel basis, it is important to recall that the Pendorff parcel was almost entirely built-out but is still in need of planning and zoning. The Pendorff parcel occupies approximately 1.5 square miles and had a population of 691 people in the year 2000. The population density in the Pendorff parcel is 460.6 persons per square mile. The predominate land use is older low-to-moderate, single-family housing. There are approximately 56 businesses in the parcel. *See* Exhibit L-52. The Western parcel is made up of the multi-million dollar Laurel SportsPlex, owned by the City of Laurel, 37 single-family residences, one church, 13 mobile homes, and four businesses. The population is 310 and the land area is approximately one half square mile. The population density is approximately 224 persons per square mile. There is an undeniable need to control growth around the City's multi-million dollar sports facility.
>
> In the City of Laurel' s brief, page 51, the city of Laurel argues specifically about the need for planning and zoning in the Pendorff parcel, the Western parcel, and the original Shady Grove parcel. **There is no argument posed by the City for the need for zoning and planning in the Shady Grove parcel as it is being considered in light of HB 1730. Therefore, based on the lack of evidence and the City's lack of**

[35] The Special Chancellor found:

> The need for services must the focused on the Pendorff and Western parcels. The Mayor testified that the population in the Pendorff parcel is more dense than any other area in the PAA, that it has raw sewage flowing in its ditches, and the citizens in that parcel want assistance. Also, consideration must be given to the fact that the City of Laurel already provides water.

argument, this Special Chancellor finds that this factor weights against the annexation of the Shady Grove parcel. [Emphasis Added]

Laurel respectfully submits that if the Special Chancellor applied the same standards to the 2.2 square mile area as was applied to the Pendorff area the result would necessarily be the same. It is clear that because Laurel made its argument related to the need for planning and zoning only to the original annexation area (which included the 2.2 square mile area) and not to the entire Shady Grove Utility District the Special Chancellor discounted the matter in its entirety. It was error. One cannot avoid a feeling that he was manifestly wrong.

6. On the issue of **enjoyment of economic and social benefits of the municipality without paying a fair share of taxes** the Special Chancellor found the factor favored annexation of all areas.

7. On the issue of **Fair Share** the Special Chancellor found "It is true that if the City of Laurel is considered the "economic hub of Jones County" then it is likely that all areas in the PAA would benefit from the economic and social benefits provided by annexation.

8. On the issue of **Past Performance** the Special Chancellor found:

> The City acknowledged there were problems in the City, and always would be, but that they were being addressed. The City of Laurel has provided in a timely fashion for the capital improvements and municipal services required, and is dealing with problems common to all cities in a responsible manner. This indicium weighs in favor of the annexation of all areas of the PAA.

Past performance obviously supports the annexation the 2.2 square miles to the north.

9. Considering the indicia – **Natural Barriers** the Special Chancellor found that this indicium weighs in favor of annexation into all areas of the PAA. Once again this obviously includes the 2.2 square mile northern area.

10. **Financial Ability** - The original special Chancellor found "When the annexation process began, Laurel was in good financial condition, and the cost of providing the improvements and municipal services as planned was well within the ability of the city to meet." The 2.2 square mile to the north was in that original annexation. During trial there was never an issue as to the financial ability of Laurel to provided general fund services (i.e.

police, fire, planning and zoning) to the annexation area. The only issues revolved around providing water and sewer. Of all the areas sought to be annexed the 2.2 square miles in question is least expensive to serve. Water is already provided. Sewer is provide to a significant number of customers. Unlike the financial commitments required to address problems in Pendorff, the evidence reflects that little expenditure well within the capabilities of Laurel are required.

11. Impact on Voting Strength of Minorities. Examined in the proper context as discussed by the United States Supreme Court in *City of Richmond v. U.S.* 422 U. S 358(1975).[36]

12. No **other factors** were found impacting on the reasonableness of any of the parcels proposed for annexation.

Under the totality of the circumstances one can only be left a clear understanding that the annexation of this area was reasonable. The Special Chancellor committed manifest error in refusing to approve annexation of this densely populated area immediately adjacent to the Laurel City limits and already provided with water and sewer by Laurel.

D. ANNEXATION OF THE BALANCE OF THE TERRITIORY

With regard to the balance of the territory (Shady Grove Utility District and Sharon) the City of Laurel submits the Special Chancellor erred. That error is revealed when the indicia of reasonableness are considered individually.

E. NEED FOR EXPANSION

With regard to the City's Need for Expansion, the Chancellor wrote extensively. As with each of the other indica he did not address the area to the north but outside the Shady Grove utility district (the 2.2 square miles) He found:

> The Supreme Court quoted the ruling of the original Special Chancellor in their discussion of this indicium of reasonableness. The Supreme Court urged this Court to consider the factors given in the case *In the Matter of the Enlargement and*

[36] Discussed in detail later in this brief.

Extension of the Boundaries of the City of Macon v. City of Macon, 854 So.2d 1029, 1034 (Miss. 2003), to determine whether the city of Laurel has a reasonable need for expansion. These factors are clearly stated with supporting citation in the Supreme Court's opinion in *City of Laurel,* 918 SO.2d at 1275.

-*Spillover Growth*

The factor of spillover growth weights in favor of Laurel's need for expansion -- Pendorff, Western, and Shady Grove parcels in the PAA.

As is discussed in the "Increased Traffic Counts" factor below, there is clear evidence of increased traffic counts in the Pendorff, Western, and Shady Grove parcels in the PAA. These counts are evidence of spillover growth into in the Pendorff, Western, and Shady Grove parcels in the PAA.

This Special Chancellor finds the testimony of Michael Slaughter, the expert called by the City of Laurel and accepted as an expert in the field of civil engineering and urban regional planning, to be well-taken in regard to his opinion that there has been spillover growth into the Pendorff, Western, and Shady Grove parcels in the PAA. Page(s) T. 1728, 1718-1719 of Trial Transcript. Exhibit L-25 reflects this shift in population.

However, using the *Macon* factors the testimony at trial bears out that there is no proof of need to expand into the Sharon parcel. First, related to the question of spillover development into Sharon, the city of Laurel's own Mayor, the Honorable Susan Vincent, testified at trial that there was a dearth of development into the Sharon parcel, stating she was not aware of any new subdivisions that had been planned or begun in the Sharon parcel. Page(s) 521 of Trial Transcript. Mayor Vincent also testified that she was also aware of no city of Laurel utility services being offered in the Sharon parcel, unlike the Pendorff parcel and Western parcels or in a portion of the Shady Grove parcel. Page(s) 401, 404 of Trial Transcript.

Mayor Vincent goes even further, admitting that unlike some of the other proposed areas of annexation, the Sharon parcel has not had any requests for voluntary annexation into the city of Laurel that sometimes occurs when development reaches the outskirts of a municipality and the developers wish to have city services. Page(s) 407 of Trial Transcript.

Mayor Vincent's testimony on the development of the road leading into the Sharon parcel is revealing as to the lack of spillover development into the Sharon parcel. The Mayor's testimony reveals that the commercial areas along 5th Avenue heading north out of the city of Laurel to Sharon Road have been vacant and run down for around ten years. Page(s) 465 of Trial Transcript.

Still focusing on the factor of spillover growth and also the *Macon* factor of "the need to maintain and expand the City's tax base", discussed further below, the counsel representing the Sharon parcel questioned Michael Slaughter, the city of Laurel's expert in municipal planning. Mr. Slaughter was questioned regarding the number of businesses that generated sales tax revenue located within the Sharon parcel in an effort to see if the alleged spillover growth existed and whether there was any significant tax benefit to the city of Laurel should there be success in annexing

the Sharon parcel. Mr. Slaughter testified to there being only two businesses, a flower shop and a little grocery store, in the Sharon parcel that would generate tax revenue for the city of Laurel upon annexation. Further Mr. Slaughter stated "There's 150 businesses in the annexation area. The larger majority is outside the Sharon area." Page(s) 2139, 2233, 2236 of Trial Transcript.

Upon further questioning Mr. Slaughter reiterated that no one from the Sharon parcel, developers or otherwise, had asked to be annexed to get the benefit of the city of Laurel's services prior to the annexation attempt and that there are no organized subdivisions currently existing in the Sharon parcel. The absence of any subdivision within the Sharon parcel calls into question the city of Laurel's claims of spillover growth. Page(s) 2311, 2204 of Trial Transcript.

The expert on behalf of the Sharon parcel, Jim Elliot, testified as to the development he studied and observed relative to the Sharon parcel. Mr. Elliot did not find any significant residential development in the Sharon parcel within the two years leading up to November 2001. Neither did he find any new subdivision activity. He observed one new warehouse being constructed within the two years that he studied the Sharon parcel prior to his testimony in November 2001. Page(s) 3608 of Trial Transcript.

As to the *Macon* factor for spillover growth, this Special Chancellor finds that there is virtually no spillover growth into the Sharon parcel.

Internal Growth

The City of Laurel has been fairly successful in redeveloping the existing downtown and redevelopment improves the situation. The City has taken significant initiatives in taking advantage of programs and projects to improve the overall environment, ambiance and character of the downtown area, and it is more attractive than it was twenty years ago. Page(s) 2073,3055 of Trial Transcript. Likewise, the shopping area to the immediate west of downtown is still undeveloped real estate and is a positive asset for the City. Page(s) 3055 of Trial Transcript.

Redevelopment has an impact in attracting adjacent development as shown by small businesses, restraints and other stores surrounding the shopping mall located within the City. Page(s) 3056 of Trial Transcript.

Thus, the City's growth is within its downtown area, and it is reasonable that its focus should be there.

Mr. Brogdon, as a member of the City Council at the time the annexation ordinance was enacted, testified as to developments in the city of Laurel and to the availability of vacant land. Page(s) 3398, 3425-3432 of Trial Transcript.

Mr. Lusteck, Shady Grove's expert witness, also testified as to his personal inspections of the City and his observations. Mr. Lusteck testified that the city of Laurel did not have a need to expand to accommodate any additional housing or any population growth and there is no need for territorial expansion by the City. Page(s) 3027-3031 of Trial Transcript.

The testimony of the Brogdon and Lusteck, when considered with the fact that 27.6% of the land within the City is not developed, does not show a need for the expansion of the city of Laurel's municipal boundaries for the purpose of residential or commercial development.

The City contends that it has a need for commercial development. However, the evidence also indicated that there are many businesses within the City's present boundaries that have closed and are boarded up, that the downtown area is being revitalized, that other businesses are closing, and that businesses such as Walmart and others have already moved from their former locations which were closer to the outer boundaries of the City toward the more central part of the City. The evidence indicated that there was sufficient land available for commercial development within the present municipal boundaries, that no business or commercial development had sought and was unable to find suitable land within the City.

There has been a numerical decline in manufacturing, retail trade, and wholesale trade from 1977 through 1997. Page(s) 3034 of the Trial Transcript. The number of wholesale trade business declined from 1977 to 1997. Page(s) 3034-3035 of the Trial Transcript. The number of employees in wholesale establishments decreased from a high of 1000 in 1982 to 587 in 1997. Page(s) 3035 of the Trial Transcript. The number of retail establishments declined in each five year period and although the number of employees in that category increased for a while the number started moving back down so that the 1997 number of employees is close to the 1977 number. Although the City has an active downtown there are a lot of vacant store fronts, and there is a nice large shopping area near downtown. Page(s) 3037 of the Trial Transcript.

Mr. Lusteck also testified that the presence of vacant buildings and vacant land and the redevelopment of the same is positive from the development point of view, but it does not support the need for additional lands outside the present city boundaries. Page(s) 3038, 3046 of the Trial Transcript. While sales volume may increase because of a Walmart, a Walmart can sell ten times a much as twenty stores and is concentrated on one piece of land so that other space can be used for alternative purposes. Page(s) 3038-3039 of the Trial Transcript.

There is a lot of territory in the City that could be developed and/or redeveloped, and it could focus on using its assets that are available. Page(s) 3045 of the Trial Transcript.

This factor weights against the need for annexation.

Population Growth

The city of Laurel has seen a continual decline in population for the last forty years. In spite of past annexations, the population of the City has dropped from 27,889 on 1960, to 24,145 in 1970, to 21, 897 in 1980, to 18,827 in 1990 and to 18,893 in the year 2000. Such a continual decrease in population certainly calls into question the City's need to expand and indicates that there is no current need for the City to expand its municipal boundaries. The lack of growth diminishes the need for expansion. *In the Matter of the Enlargement of the Corporate Boundaries of the City of Gulfport,* 627 So.2d 292,297 (Miss. 1993).

Mike Slaughter, the City's expert witness on urban planning, recognized the continued decrease in the population of the City, that the construction of the new residential units within the City was not enough to say there was a need for expansion, that 72.4% of the land within the City is developed (page(s) 1947 of Trial Transcript), that the median age of the residents of the City has increased from 26.9 in 1960 to 34.9 in 1990 (Page(s) 1714, 1939 of the Trial Transcript), that there was increase in the number of persons over 50 and beyond child bearing age (Page(s) 1715, 1877 of Trial Transcript), and that the median age of citizens in the City is 34.9 and the median age of citizens in Jones County is not significantly different at 33.6 (page(s) 1940 of Trial Transcript).

Mr. Slaughter also testified to the loss of jobs in the city of Laurel and its effect on Laurel's population. Page(s) 2201 of the Trial Transcript.

The evidence showed without question the outward flow of population from the city of Laurel and belies any internal growth as well. In Exhibit L-15, "Building Permit Trends, City of Laurel", it is clearly seen that new residential dwelling units being built within the City of Laurel peaked back in 1995 and has been trending downward while new commercial construction has been basically stagnant.

This factor does not indicate a need for annexation.

The City's Need for Development Land

The testimony of the City of Laurel's expert, Michael Slaughter, establishes that the PAA (about 17 square miles) is larger than the existing size of the city of Laurel (about 16 square miles). *See* Exhibit L-52. The evidence establishes that the City of Laurel is 72.4% developed. Exhibit L-92.

Mr. Slaughter had not calculated the rate of consumption of land within the City (page(s) 2207-2209 of Trial Transcript), and he testified that less population per square mile is not an indicator of growth but of decline (Page) 2212 of Trial Transcript), and that a population loss and dwelling unit loss does not indicate a need for expansion (page(s) 2202 of Trial Transcript).

Neither did Mr. Slaughter make any calculation outside the city as to how long it would take to fully develop the P AA. Page(s) 2208-2209 of Trial Transcript. Mr. Slaughter further testified that he had not done any land use analysis of how much each of the areas proposed for annexation was needed (page(s) 2233, 2261 of Trial Transcript), and that he was not aware of any developer in the proposed annexation area that had asked for the services of the City (page(s) 2288 of Trial Transcript). He also testified that he did not think the City was choked down and that he did believe there was a need to expand from within. Page(s) 2074-2075 of Trial Transcript.

The Sharon parcel's expert, Jim Elliot, testified as to his opinion regarding the need to expand. Page(s) 3649, 3654 of Trial Transcript. Mr. Elliot found that there was no need for the City to expand based on this particular factor. In Elliot's testimony he revealed his observation of "more than 150 acres" of vacant land suitable for commercial development. . . .

Despite the declining population and the declining economy as noted above, the City of Laurel has been fairly successful in redeveloping the existing downtown and redevelopment improves the situation. Redevelopment has an impact on attracting adjacent development as shown by the small businesses, restaurants and specialty stores surrounding the shopping mall located within the City. Page(s) 3056 of the Trial Transcript. Thus, the City's commercial growth is within its downtown area, and it is reasonable that its focus should be there.

Mr. Jones Brogdon, a former member of the City Counsel, testified that residential and commercial land is being made ready for development but that no one was buying the lots or developing the properties because there was no demand for the land. Page(s) 3432 of Trial Transcript. Mr. Brogden testified that any new commercial developments had been either downtown or on Sixteenth Avenue. When asked about other vacant land in those areas he said, "Yes, vacant land. There's vacant land everywhere down through there. It's expensive but there's plenty of places and there were a multitude of 'for sale' signs for commercial property." Page(s) 3432 of Trial Transcript. Mr. Brogden also testified that there was plenty of land for residential development in the City. Page(s) 3423, 3429-3432 of Trial Transcript.

Mr. Joe Lusteck, the expert witness for Shady Grove, also testified to his inspections of the City and his observation of a lot of "for sale" signs. Page(s) 3027-3030 of Trial Transcript. He observed vacant houses and commercial space that needed substantial work. Page(s) 3027 of Trial Transcript. He also observed numerous "for rent" signs at apartment complexes. Page(s) 3027 of Trial Transcript. Mr. Lusteck testified that the presence of vacant buildings and vacant land and the redevelopment of others is positive from the development point of view, but it does not support the need for additional lands outside the present City boundaries. Page(s) 3038 of Trial Transcript.

Most annexations involve a growth component with significant demand for real estate to accommodate either new population or new economic growth, neither of which is present in this attempt at annexation. Page(s) 3046 of Trial Transcript. The City of Laurel has experienced decline and continues to experience some decline, and the evidence indicates an alternative strategy for redevelopment is available to the City by taking what is no longer being used and put it to its highest potential use.

This Special Chancellor considered the City's argument for this factor based on its level of development. This argument is not well-taken in light of the declining population and land available for new development and redevelopment in the City of Laurel as discussed in the previous section.

Therefore, for all of the above-stated reasons, this Special Chancellor finds that there is not a reasonable need for more developable land for the City of Laurel. This is particularly true, as Mr. Slaughter testified that he had not done any land use analysis of how much of each parcel for annexation was needed for future development.

The Need for Planning in the Annexation Area

The proof is undisputed that the total arsenal of planning tools available to Jones County to implement land use planning is a limited set of subdivision regulations (3 ½ pages). There is absolutely no zoning in unincorporated Jones County. In contrast, Laurel has in place standard building and housing codes, a comprehensive plan, and zoning ordinances to direct and guide growth in each area.

Each of these items would provide some measure of protection for orderly planning and development. Generally these codes and ordinances work for the benefit of the citizens of a city.

The cases decided by the Mississippi Supreme Court have considered a variety of factors in addressing this *Macon* factor. Annexations have been approved where the municipality proposes to provide no zoning at all. Many of the cases decided have involved situations where there is no zoning in the county. More apropos are those cases where the Supreme Court has addressed the need for zoning where there is no county zoning ordinance, as is in this case.

When considering this factor on a parcel-by-parcel basis, it is important to recall that the Pendorff parcel was almost entirely built-out but is still in need of planning and zoning. The Pendorff parcel occupies approximately 1.5 square miles and had a population of 691 people in the year 2000. The population density in the Pendorff parcel is 460.6 persons per square mile. The predominate land use is older low-to-moderate, single-family housing. There are approximately 56 businesses in the parcel. *See* Exhibit L-52. The Western parcel is made up of the multi-million dollar Laurel SportsPlex, owned by the City of Laurel, 37 single-family residences, one church, 13 mobile homes, and four businesses. The population is 310 and the land area is approximately one half square mile. The population density is approximately 224 persons per square mile. There is an undeniable need to control growth around the City's multi-million dollar sports facility.

In the City of Laurel' s brief, page 51, the city of Laurel argues specifically about the need for planning and zoning in the Pendorff parcel, the Western parcel, and the original Shady Grove parcel. There is no argument posed by the City for the need for zoning and planning in the Shady Grove parcel as it is being considered in light of HB 1730. Therefore, based on the lack of evidence and the City's lack of argument, this Special Chancellor finds that this factor weights against the annexation of the Shady Grove parcel.

Moreover, much of the north portion of this parcel is rural, approximately 6.1 square miles of which is in agricultural usage. Any land use already existing in the southern portion of this parcel would be grand-fathered into any zoning ordinance. This factor must be considered as it relates to the whole of the Shady Grove parcel and does not see a need for the City of Laurel to exercise its control over of the Shady Grove parcel.

The City of Laurel completely omits the Sharon parcel when detailing its argument for the need for planning within the PAA. This Special Chancellor finds that the Sharon parcel is very largely rural with little need for the myriad of city ordinances and restrictions that are truly incompatible with a rural lifestyle. The Sharon parcel is very rural and would not benefit from the municipal zoning requirements with all the strictures that are designed to protest tightly compacted yards and houses. Page(s) 3688, 3693, 3703 of Trial Transcript. Therefore, this Special Chancellor finds that there is no need for the zoning and planning that the city of Laurel could offer. For this reason, this factor mitigates against the annexation of the Sharon parcel.

However, there was an issue raised in regard to potential health hazards in the Sharon parcel. These potential health hazards related to septic tank overflow

problems. This Special Chancellor finds that these problems were limited to a small area and are not the sort of problems such that annexation would be the only remedy. Page(s) 3659 of Trial Transcript.

Increased Traffic Counts

The city of Laurel's expert, Michael Slaughter, testified that the Pendorff parcel (Highway 11) had a 26,000 traffic count in 1999, the Western parcel (U.S. Highway 84) had a 15,000 traffic count, the original Shady Grove parcel (Highway 15 North) had a 11,000 traffic count, the subsequently added Shady Grove parcel (further North on Highway 15) had a 7,200 traffic count, and the Sharon parcel (Highway 537) had a 3,200 traffic count in 1999. Page(s)
496 of Trial Transcript.

The traffic counts reported for the Pendorff and Western parcels clearly support the need to annex these parcels.

The traffic counts reported for the original Shady Grove parcel do clearly indicate spillover growth; however, the counts do not clearly indicate a need to annex the Shady Grove parcel. The traffic counts reported for the northern portion of the Shady Grove parcel are less than half the traffic counts reported from the Western parcel. This Special Chancellor finds that the City failed to demonstrate the meaning of the traffic counts of the various parcels relative to other cities in Mississippi and to each other. The failure of the City to brief this factor dictates that this factor should not weigh in favor of the need of annexation of the Shady Grove parcel.

The Sharon traffic count was approximately half of the traffic count in the northern portion of the Shady Grove parcel. The Sharon parcel was by far the parcel with the least amount of traffic based on Mr. Slaughter's data. This *Macon* factor heavily stands against the city of Laurel's need to expand into the Sharon parcel.

The Need to Maintain and Expand the City's Tax Base

This factor weights in favor of the need to annex into the Pendorff, Western, and Shady Grove parcels. The undisputed evidence in this case is that the city of Laurel is the economic hub of Jones County. The area's primary employment base is located in Laurel. Likewise, it is clear that there has been spillover growth in the Pendorff, Western, and original Shady Grove
parcels.

In regard to this *Macon* factor, as it relates to the Sharon parcel, the Special Chancellor would recall here his discussion of spillover growth, that out of 150 businesses in the entire PAA, only two are located in the Sharon parcel. Such little economic activity hardly weights in favor of the City of Laurel annexing into the Sharon parcel to maintain and expand its tax base.

Limitations Due to Geography and Surrounding Cities

The City of Laurel is locked in by flood plains on its east boundary and on its west boundary. *See* Exhibit L-43. These surrounding areas could be developed, but at an increased cost; therefore, these areas are less desirable. This leaves the City, if it is

to expand, to go to the north or to the south, and to a limited extent to the west within the Western parcel that is proposed for annexation. This factor favors the city of Laurel's need to expand into all of the particular parcels in this case.

However, there is a lack of streets connecting the City to the Shady Grove parcel. That fact when considered with the evidence that the City did not plan on developing any streets in the Shady Grove parcel weakens the effect of this indicium toward the overall reasonableness of the annexation of the Shady Grove parcel.

Remaining Vacant Land within the Municipality

This Special Chancellor finds that the issue of vacant land has been specifically discussed within "The City's Need for Development Land" and "Internal Growth" factors above. From the testimony cited in that category it is clear that the City of Laurel has ample room to grow within its present boundaries given its declining rate of population over the last 40 years.

The evidence indicated that the City had demolished some 400 dwelling units within the recent past. The demolition increased the potential lot size. The testimony also indicated that several apartment complexes have been built within the City. Apartment complexes house more people within a smaller footprint than individual housing units. Page(s) 3433 of Trial Transcript

There is ample vacant land remaining within the city of Laurel for growth. This factor does not weigh in favor of the City of Laurel's need to expand into any parcel in this case.

Environmental Influences

The Special Chancellor finds that the City of Laurel did not even make an argument under this factor to justify its need to expand. Therefore, this Special Chancellor finds that this factor does not weigh in favor of the City of Laurel's need to expand into any particular parcel. [37]

The City's Need to Exercise Control over the P AA

This Special Chancellor finds that its discussion in regard to this factor would not differ from its discussion of "The Need for Planning in the Annexation Area" factor. Therefore, this Special Chancellor finds that this factor favors the annexation of the Pendorff and Western parcels and disfavors the annexation of the Shady Grove and Sharon parcels.

Increased New Building Permit Activity

Exhibit L-15 reflects building permit activity in the city of Laurel from 1990 to

[37] FOOTNOTE ADDED BY LAUREL – It appears that the Special Chancellor was under the impression that each of the factors he lists as the Macon Factors must be addressed in each case. This court recently noted with regard to these factors as follows that all may or may not be present in each case. *In re Extension of Boundaries of City of Winona* 879 So.2d 966, 977 (Miss.,2004)

2001. The building permit trend shows a steady trend for new residential dwelling units and new commercial construction and additions. However, Mr. Slaughter admitted that building permits issued by the City could have been for decks, patios, signs, additions, alterations or conversions, or adding a carport, storage facility or shed. Page(s) 1698-1699 of Trial Transcript. Therefore, this trend weakly supports the city of Laurel's need for expansion into all areas of the P AA. It follows that this trend could not logically favor the annexation of any other parcel over another.

Summary of Analysis of Macon Factors

The City of Laurel sought to annex the Pendorff parcel and there no evidence presented as to any objection to the annexation of that parcel. Further, the weight of the *Macon* factors considered indicate that there is a need for the Pendorff parcel to be annexed and the City's need to annex it.

The City sought to annex the Western parcel in which it supplies water and in which it has built and developed the SportsPlex. The evidence indicated the Western parcel included a planned subdivision which would allow for more residential development. Moreover, the evidence indicated that land was available for commercial development within the Western parcel. Only one person, Louise Wilson, objected to the annexation of the Western parcel. Page(s) 3817 of Trial Transcript. The weight of the *Macon* factors considered indicate that there was a need for the Western parcel to be annexed and the City's need to annex it.

In balancing the *Macon* factors, this Special Chancellor finds that the City of Laurel's need to annex the Shady Grove parcel is not reasonable. Only the "Spillover Growth", "Need to Maintain and Expand City's Tax Base", and "Limitations Due to Geography and Surrounding Cities" factors were found to support the City's need to annex the Shady Grove parcel. It is important to note that the resolution of the constitutional issue (H.B. 1730) and the enlargement of the Shady Grove parcel to include the northern area of the Shady Grove Water District significantly shifted many of the *Macon* factors away from supporting the City's need to annex the Shady Grove parcel.

Only one factor, "Limitations Due to Geography and Surrounding Cities", supported the City of Laurel's need to annex the Sharon parcel. In balancing the *Macon* factors, this Special Chancellor finds that the City of Laurel's need to annex the Sharon parcel is not reasonable.

This Court has discussed the factors which justify a municipality's need for expansion in series of cases over the last several years. In doing so a number of factors have been identified in determining whether a municipality has a need for expansion. Among the factors that have been considered by the Mississippi Supreme Court in determining whether a municipality demonstrated a

need to expand are:[38]

- Whether "spillover" development had occurred into the proposed annexation area[39]
- Remaining vacant land within the municipality.[40]
- The City's need is for vacant developable land.[41]
- Whether the municipality is growing internally.[42]
- Need to maintain or expand its tax base, especially as growth and development occurs on its perimeters.[43]
- Whether the population of the municipality is increasing.[44]
- Increasing traffic counts[45]Limitations due to geography and surrounding cities[46]
- Environmental influences (i.e. floodplain, wetlands)[47]
- Need to expand the city's borders to exercise control over development and to provide comprehensive planning for growth.[48]
- Increased new building permit activity[49]

In examining these factors, the Chancellor clearly erred in the foregoing findings related to need for expansion. At the outset it should be noted that the Special Chancellor misapplied the law as it relates to an analysis of the need for expansion indicia. He analyses the "*Macon* factors" not from the standpoint of does Laurel have a need to expand, but rather whether Laurel has a need to expand into particular parcels. Laurel respectfully suggest that the issue of whether a municipality has a

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[38] The Special Chancellor refers to these as the "Macon" factors.

[39] *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, (Miss. 1995)

[40] It is widely recognized that "rarely will a city become 100% "built out," *Extension of Boundaries of City of Ridgeland v. City of Ridgeland* 651 So.2d 548, 555, (Miss. 1995) See also *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 , (Miss. 1999)

[41] *Matter of Extension of Boundaries of City of Columbus,* 644 So.2d 1168, 1173 (Miss. 1994)

[42] *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, (Miss. 1995)

[43] *Matter of Enlargement and Extension of the Mun. Boundaries of the City of Jackson*, 691 So.2d 978, 789, (Miss. 1997)

[44] *Matter of Extension of Boundaries of City of Columbus,* 644 So.2d 1168,1174 (Miss. 1994), *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 , (Miss. 1999)

[45] *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 , (Miss. 1999)

[46] *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 , (Miss. 1999)

[47] *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 , (Miss. 1999) *Matter of Extension of Boundaries of City of Columbus,* 644 So.2d 1168, (Miss. 1994) *Matter of City of Horn Lake* 630 So.2d 10, 17, (Miss. 1993)

[48] *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, 553 (Miss. 1995)

[49] *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, 553 (Miss. 1995)

need to expand relates to the City. If Laurel has a need to expand the decision of where to expand is entrusted to the city and not the Court. Once it was determined that there was a need to expand the other indica deal with the reasonableness of each particular parcel – i.e path of growth, natural Barriers, financial ability, need for services.

1. Whether "spillover" development had occurred into the proposed annexation area

The evidence in this case clearly leads to the conclusion that Laurel has demonstrated spillover. The opinion of the Chancellor confirms that with the exception of the finding related to the Sharon area. Likewise the opinion of the former Special Chancellor is in accord.[50]

His opinion states:

Exhibit L-25, RE-170, the existing land use map clearly reflects spillover growth in the proposed annexation area. It is important to note that this spillover growth is in every direction. Clearly it is not limited to the Pendorff area.

2. Whether the municipality is growing internally

3. Whether the population of the municipality is increasing

The City of Laurel has experienced population declines over the years.[51] However, that

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[50] His opinion states:
Michael Slaughter, called by the City and accepted as an expert in the field of civil engineering and urban and regional planning, was of the opinion that as true of other older cities, as the population of Laurel decreased, spillover growth took place just outside the City in the proposed annexation area. Exhibit L-25 reflects that shift in population. RE-170.

[51] Laurel experienced significant population decline from 1970 to 1990. That population decline slowed significantly between 1990 and 2000. The records of the United States Bureau of Census reflect:

Year	Population	Dwelling Units	Persons/D.U.
1970	24,145	8,259	2.92
1980	21,897	9,006	2.43
1990	18,827	8,381	2.25
2000	18,393	8,341	2.21

See L-24 RE-169

It is important to note that though population was declining so was the size of households. As the number of persons per dwelling unit declines, it takes more land resources to house the same population. Michael Slaughter explained.

> Q. Now, sir, tell me how on each the city of Laurel can have a need for expansion when its population has declined from 1970 of 24,000 to just over 18,000. How can that be?

decline slowed significantly during the last decade. Between 1990 and 2000 the population of Laurel decreased from 18,827 persons to 18,393 persons, a decrease of only 434 persons. Whether population is growing or declining is only one factor to be considered in addressing the need for expansion. One of the most recent annexations approved by the Mississippi Supreme Court was in Petal. There the population of the City had decreased between 1980 and 1990. In considering the argument that lack of population increase the Court said:

> Petal argues population is only one factor considered when determining whether a city needs to expand. Petal argues that a decrease in population does not preclude annexation. Petal claims that at least ninety- seven entities have located to Petal since 1997 and the rate of commercial and residential permits has steadily increased. Petal maintains that it cannot grow within the existing boundaries for several reasons: (1) a substantial portion of the western area of the city is located in the floodway of the Leaf River and that it is against federal regulations to develop in a floodway; (2) a substantial portion of the northern half of the city is located in areas that have severe slope (12% or higher) or floodway; and (3) severe slope soil and floodways are located in the southern portion of the city. Due to these development constraints, Petal argues that there is a shortage of land available for industrial and residential use. Therefore, development occurs on the outskirts of the city.

¶ 10. The chancellor found that:

> The vacant land analysis of the existing city of Petal shows that Petal has approximately 50.8% of its land now developed. This leaves 49.2% undeveloped, 25.3 % of which is unconstrained. The remaining 23.9% is constrained by either flood plain, flood way or

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A. Well, the city of Laurel has had an aging population. The persons per dwelling unit inside the city has decreased from 2.92, almost three persons per dwelling unit in 1970.

Q. What does the age of population have to do with land absorption and need for space?

A. Well, as a family that may consist of a mom and dad and three children, over time as the children grow up the number of persons living in that household will decline as the children move away. So, as a population such as Laurel ages, the persons per D.U. Declines as well. [T-1695]

. . .

Q. So, is there a direct correlation between aging of a population and number of household units necessary to accommodate population?

A. Yes, sir, there is a correlation. As your population ages, it takes more space to occupy, to hold the same number of people that you once held say in 1970, when you had more persons per dwelling unit. Because there's not as many physical people in each dwelling unit. [T-1696]

> severe slope. The unconstrained vacant land consisting of approximately 2.43 square miles, while available for development, has the ultimate constraint of ownership. Many of the owners do not wish to sell their land for development. The Court is therefore of the opinion that Petal has established by the evidence that it has need to expand.

Another situation similar to that found in Laurel is found in the recent Meridian annexation. As in Laurel, Meridian had been experiencing population declines over time. In finding that Meridian had established a need for expansion the Court cited the testimony of Mayor Kemp. The Court said:

> Kemp also discussed the City's population trends, stating that due to the increased age and poorness of the City's residents and the possibility that the County Supervisors could elect not to spend money back into the City, the City would become unable to sustain itself and would have to double tax existing residents. An example given was the more affluent younger people moving outside the City yet continuing to work within the City, thus utilizing the infrastructure that the City's residents pay for. Kemp firmly stated that the City of Meridian was the economic center of the area and that the County would be directly affected by any form of stagnation of the City, thus he opined that the City had a great need to expand its existing boundaries. **Annexation of the area in question was reasonable based on this criterion.** *Enlargement and Extension of Mun. Boundaries of City of Meridian v. City of Meridian* 662 So.2d 597, 614 (Miss.,1995) [Emphasis Added]

The situation in Laurel is similar. Without question, the evidence established that Laurel is the economic engine driving the local economy.

A recent annexation case decided by this Court involved a city with a declining population. *In re Extension of Boundaries of City of Winona* , 879 So.2d 966, 977 (Miss.,2004). In that case it is significant that the City was not experiencing the type of non-residential growth being experienced in the City of Laurel.[52]

4. Remaining vacant land within the municipality.[53]

The evidence establishes that the City of Laurel is significantly built out. Exhibit L-92 -RE-

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[52] It should be noted that the original Special Chancellor found as a matter of fact that economic activity in Laurel had created 2500 more jobs in Laurel in 1997 than there were in 1977. Non- residential land uses absorb land into urban usage just as surely as does residential development.

[53] It is widely recognized that "rarely will a city become 100% "built out," *Extension of Boundaries of City of Ridgeland v. City of Ridgeland* 651 So.2d 548, 555, (Miss. 1995) See also *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 , (Miss. 1999)

920, reflects the City of Laurel is 72.4% developed. This is consistent with levels of build out that have traditionally been viewed as indicating a clear need for expansion. Though the Mississippi Supreme Court indicated there is no magic build out number[54] Joseph Lusteck, an urban planner hired by the objectors has consistently testified "that a city should generally be looking at expansion when it is two-thirds built out, and to expanding when it is three-fourths built out." *Extension of Boundaries of City of Ridgeland v. City of Ridgeland* 651 So.2d 548, 555 (Miss.,1995). The recent case decided by this Court rejected the claim that the City of Winona (population approximately 6,000) had no need to expand because it has over 2,600 acres (34% of the land) *In re Extension of Boundaries of City of Winona,* 879 So.2d 966, 977 (Miss.,2004) Here, the City of Laurel has less vacant land than Winona, a city with one-third its population and the " "Building permits as reflected on Exhibit L-15, RE-167, indicate a steady level of development." (Opinion of original Special Chancellor).

Additionally, the testimony was uncontroverted that the City of Laurel was forced to locate its multi-million dollar recreational complex in the Proposed Annexation Area due to lack of suitable vacant land in the existing city. Laurel's level of build out establishes a need for expansion.

5. Increasing Traffic Counts

The uncontroverted evidence established that traffic counts in and surrounding Laurel were increasing. The Chancellor correctly found "Traffic counts have also increased (Exhibit L-90)" RE-919. It is important to note that traffic count increases were not limited to the Pendorff area and the Western area. This factor could not logically indicate a need for expansion only into Pendorff and the Western Area. Of particular importance to the north are the findings of the Chancellor that the further from Laurel one goes the less the traffic counts. The significance is evident. Laurel is the economic hub of the area.

[54] See *In Re Hattiesburg*, supra.

6. Need to maintain or expand its tax base, especially as growth and Development occurs on its perimeters

The undisputed evidence in this case is that Laurel is the economic hub of the area. The area's primary employment base is located Laurel. Laurel has taken the lead in economic and industrial development. Likewise it is clear that there has been substantial spillover growth from the existing city into the PAA. A review of the existing land use map can lead to no conclusion other than that development has spilled over. This growth runs the gamete of urban uses. It includes single family residential, multifamily residential, commercial, industrial[55] public[56] and semi-public.[57] This has occurred without the benefit of municipal level planning and zoning being in place. The conditions that have developed in the Pendorff area are a precursor of what is likely to occur in the other areas sought to be annexed.

The evidence shows that there are 150 businesses in the proposed annexation area. Presently the sales tax rebates available from this commercial activity is being lost to the local economy.

Laurel demonstrated need for expansion indicates the reasonableness of the proposed annexation.

F. PATH OF GROWTH

The Special Chancellor found:

> This Special Chancellor finds that the Shady Grove, Pendorff, and Western parcels are all within the path of growth of the City of Laurel. The Special Chancellor would refer to its discussion above of the "Spillover Growth" and "Limitations Due to Geography and Surrounding Cities" factors in support of his finding in regard to this indicium.
>
> The evidence of the construction of the SportsPlex within the Western parcel by the City of Laurel is clearly an indication that this parcel is within the path of growth.
>
> The evidence shows what growth there is in the downtown area of the City of Laurel and the area to the south along Highway 84. Mr. Slaughter, the City's expert witness on planning and annexation, agreed that the path of

[55] Greater Laurel Industrial Park in the so called Sharon area.
[56] Schools
[57] Churches

growth is not to the north but from the north to the south. Page(s) 2223 of Trial Transcript.

In regard to the Shady Grove parcel, it seems that the sheer number of people living the Shady Grove parcel alone makes it an area that would naturally experience spillover growth from the City of Laurel.

There is no factual basis that would justify a finding that the Sharon parcel is within the City's path of growth. The City of Laurel failed to meet its burden of proof that the area to the north of its present boundary, the Sharon parcel, is experiencing any significant growth. Further, the lack of any subdivisions currently existing in the Sharon parcel or being currently planned favors strongly against the Sharon parcel being within the path of growth of the City of Laurel.

This indicium weighs against the reasonableness of the annexation of the Sharon parcel.

The Chancellor found all areas except Sharon sought to be annexed was in its path of growth. This while not an independent test, this factor clearly weighs in favor of annexation. It weighs in favor of not just of the Pendorff area and the Western Area but of the balance of the proposed annexation area.

G. POTENTIAL HEALTH HAZARDS

The Chancellor found with regard to the issue of potential or existing health hazards as follows:

Factors which the Mississippi Supreme Court has recognized as supporting the reasonableness of annexation related to potential health hazards from sewage and waste disposal include a large number of septic tanks in an area, soil conditions which are not conducive to onsite systems, open dumping of garbage, and standing water.

Portions of the Pendorff, Western and Shady Grove parcels sought to be annexed are already provided with central sewer by Laurel. In those areas, no health hazards from the disposal of sewage were shown. However, there was evidence of potential health hazards from the disposal of solid waste in other parts of the Pendorff, Western and Shady Grove parcels where central sewer service is not provided by the City. *See* Exhibits 48 and 49.

The evidence clearly indicated that the Pendorff parcel is densely populated, that there is inadequate sewer service, that it has significant drainage problems, that it is in need of sewer service, and the City already provides water and sewer service within the parcel. Mr. Jim Westin, an environmental health program specialist in the waster water program for the State Department of Health, testified that he did not know of anyone who had gotten sick because of sewage problems in any of the parcels; however, he was of the opinion that the on-site systems found in Pendorff were approaching 100% capacity and the only solution in that parcel was some type

of central collection system. Therefore, this indicium weighs in favor of annexation of the Pendorff parcel.

In the City of Laurel's brief and the trial transcript there is no specific discussion of this indicium in regard to the Western parcel. There was only one objector, Louis Wilson, from the Western parcel that testified at trial. Wilson did not testify to the health hazards indicum. Therefore, the City of Laurel has failed in its burden of proof and this factor is found to weigh against the annexation of the Western parcel.

Mr. Westin testified that Shady Grove is mostly rural and there are large pieces of property that can be served by individual on-site wastewater disposal systems or septic tanks. He also testified that septic tanks are one of the most effective ways of treating sewage and that he did not know of anyone in the area who had gotten sick because of improper treatment of sewage. The use of septic tanks has been held to be rather insignificant in the overall test of reasonableness. *City of Southaven v. City of Horn Lake,* 630 So.2d 10 (Miss. 1993).

Further, there was no evidence that any citizen of the Shady Grove parcel is without adequate water service. In fact, almost the entire Shady Grove parcel is provided water by the Shady Grove Utility District. There was no evidence of any health hazards concerning the water service and, in fact, the undisputed testimony was that if the City was successful in its efforts to annex the Shady Grove parcel, the City will continue to use the system of the Shady Grove Utility District and will simply incorporate the system in its own.

Residents of the Shady Grove parcel, including the Superintendent of the Education for Jones County, members of the Board of Supervisors representing the parcel, and other residents testified that they knew of no health hazards, that they were satisfied with the service they were receiving and there was no evidence of any individual who had suffered any illness resulting from the use of septic tanks.

This Special Chancellor finds that this indicium weighs against the city of Laurel's annexation of the Shady Grove parcel.

Mr. Jim Westin further testified that an area within the Sharon parcel gave him concern in regard to the use of septic tanks. This Special Chancellor finds that the septic tank problems in the Sharon parcel were limited to a small area and are not the sort of problems such that annexation would be the only remedy. Page(s) 193 of Trial Transcript. Therefore, this Special Chancellor finds that this indicium weighs against the city of Laurel's annexation of the Sharon parcel.

Over the years the Court has considered this factor. From the cases it is clear that as population density increases so does the need for central sewer. In this case the Special Chancellor citizens the "backbone" sewer plan proposed by Laurel. Given the finding of the Chancellor on this indicia, Laurel suggests that such a system is exactly what the area needs. Installation of the system will allow Laurel to address sewer needs in a timely manner. In the meantime, if citizens are not

receiving sewer service they will not be paying sewer bills.

H. NEED FOR ZONING & OVERALL PLANNING

The Chancellor found:

> The Special Chancellor refers to its discussion of *Macon* factor, "The Need for Planning in the Annexation Area", in order to bolster its findings in regard to this indicium. The Special Chancellor finds that this indicium weighs in favor of the annexation of the Pendorff and Western parcels but does not weight in favor of the annexation of the Shady Grove and Sharon parcels. The Shady Grove and Sharon parcels are largely rural and do not have a need for the city of Laurel's planning and zoning.

The Chancellor was manifestly wrong in his conclusion that the need for planning and zoning favors the reasonableness of annexation of the Pendorff and Western areas but weighs against the reasonableness of the other areas.

The cases decided by the Mississippi Supreme Court have considered a variety of factors in addressing this indicia. Annexations have been approved where the municipality proposes to provide no zoning at all.[58] Many of the cases decided have involved situations where there is no zoning in the county.[59] More apropos are those cases where the Supreme Court has addressed the need for zoning where there is no county zoning ordinance as in this case.[60]

The City of Laurel established a need for planning and zoning in the area sought to be annexed. The evidence established that Jones County has no zoning ordinance in place. The proof showed that there is substantial need for municipal level planning and zoning in the area sought to be

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[58] "Zoning and Planning: Mayor Moore testified that the Town presently has no zoning ordinance. There was no evidence offered that the Town participates in any form of urban planning." *In re Extension of Corporate Boundaries of the Town of Mantachie,* 685 So.2d 724, 728, (Miss. 1996)

[59] *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,* 744 So. 2d 270 (Miss. 1999)

[60] See: *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, 559 (Miss. 1995)

> Ridgeland responds that the proposed areas are currently covered by the Madison County Zoning Regulations Ordinance, but contends its own zoning and development regulations are "superior." Ridgeland notes its regulations were designed with urban development in mind. Ridgeland argues the proof certainly showed a need for zoning and overall planning in the areas in order to combat problems associated with unregulated growth and incompatible land uses.

annexed.

Numerous examples of incompatible land use in the proposed annexation area were demonstrated by Exhibits L-39 (RE-705), L-40 (RE-706), L-53 (RE-761) and L-54 (RE-762). These exhibits reflect both the geographic distribution and extent of representative problems in the proposed annexation area related to the lack of zoning ordinances and the application of subdivision regulations.

Laurel has implemented a program of subdivision regulations which are better suited to an urbanizing area. (See Exhibits L- 86, RE-878 and L-87 RE -915) The City of Laurel has in place appropriate standard building and housing codes, a comprehensive plan, zoning ordinances to direct and guide growth in the area. Jones County has no such plans or ordinances. This indicia favors the reasonableness of the proposed annexation.

I. NEED FOR MUNICIPAL SERVICES

The Chancellor found:

> The need for services must the focused on the Pendorff and Western parcels. The Mayor testified that the population in the Pendorff parcel is more dense than any other area in the PAA, that it has raw sewage flowing in its ditches, and the citizens in that parcel want assistance. Also, consideration must be given to the fact that the City of Laurel already provides water service to the Pendorff parcel. See the testimony of Mayor Vincent in regard to the need to annex the Pendorff and Western parcels, respectively, page(s) 33, 54 of the Trial Transcript.
>
> The Shady Grove parcel is served by the Sheriff of Jones County and the parcel has a lower crime rate than the City of Laurel. The City did not deny that the law enforcement was adequate but only testified that the City has more officers per square mile. Of course the City is more densely populated than the rural area of Shady Grove and the City should have more officers per square mile in a more densely populated area. The Superintendent of Education for Jones County, the members of the Board of Supervisors representing the area, and several residents of the area testified that they were satisfied with the law enforcement services they receive. Even the school located within the Shady Grove parcel has its own officers who are deputy sheriffs.
>
> The Shady Grove parcel is also served by the volunteer fire department. The area has a class eight rating by the Rating Bureau and the City has a rating of five. Although the City has a slightly better rating and the costs of fire insurance would be less expensive on some houses, it would be higher for others. Mike Slaughter, the

City's expert, testified that as a result of annexation, the costs for insurance would actually increase on houses valued at $100,000 and above. Page(s) 2315 of Trial Transcript.

Numerous Shady Grove objectors testified that they are satisfied with the first protection they receive. The City's plan for fire protection in the PAA does not provide municipal level fire protection; whereas, as the City's plan does not provide, within any specified time, the infrastructure to provide fire hydrant service within the PAA.

The citizens of the Shady Grove parcel all receive trash or garbage service from the County. These citizens are also provided pest control by the County, and their roads are maintained by either the County or the State.

In regard to the annexation of the Sharon parcel, this Special Chancellor would refer to the discussion above of the *Macon* factor "The Need for Planning in the Annexation Area" and the "Health Hazards" indicium. These discussions, coupled with the testimony of the City of Laurel Fire Chief Steve Russell, demonstrate that this indicium does not favor the City of Laurel's annexation of the Sharon parcel. Mr. Russell testified that all of the roads to be maintained within the Sharon parcel upon annexation are covered in the second phase of the incorporation of the new parcel. Further, he testified that a "great deal" of the territory would still be provided rural fire protection. Page(s) 656 of the Trial Transcript.

Sharon's expert, Jim Elliot, summed up the argument against the need for municipal services in the largely rural Sharon parcel. Page(s) 3809 of the Trial Transcript. Although densely populated areas may need municipal services, a largely rural area like Sharon does not.

The problem that this Special Chancellor has with the City of Laurel's service and facilities plan, Exhibit L-78, is that it only provides a "backbone system" and provides sewer services only to those right along the major transportation arteries. It will not provide additional sewer services to the majority of people out in the Sharon parcel for five or ten additional years. The City of Laurel's Mayor, Susan Vincent, and the City of Laurel's water and sewer service expert, Charles' King, testified to as much. Page(s) 1652 of the Trial Transcript. Therefore, this Special Chancellor finds that the City of Laurel has not crafted a services and facilities plan that will be of any significant health benefit to the residents who live in the Sharon parcel for years to come.

It is true that other parcels of the PAA have some municipal sewer services being provided by the city of Laurel. However, the testimony is clear from the Mayor of Laurel, as well as various experts, that there is no sewer service being offered to anyone in the Sharon parcel by the city of Laurel.

Among the factors the Supreme Court has considered related to this indicia include[61]:

[61] It is important to note the context in which the Supreme Court has considered the issue of need for services. Obviously, more developed areas have a different level of need for services than lesser developed areas. In the recent Biloxi case. Cite The Supreme Court has addressed

- Requests for water and sewage service.[62]
- Plan of the City to provide first response fire protection[63]
- Adequacy of existing fire protection.[64]
- Plan of City to provide police protection.[65]
- Plan of City to provide increased solid waste collection.[66]
- Use of septic tanks in the proposed annexation area.[67]
- Population density.[68]

Much of the area sought to be annexed is densely populated. Substantial population growth has already occurred in the area. Population increased from 5,574 in 1990 to 6,151 in 2000. Dwelling units increased from 2,293 in 1990 to 2,644 in 2000. Traffic counts have increased dramatically in the PAA. (See Exhibit L-90 RE-919). The area is either already urban in character or is clearly urbanizing.

Michael Slaughter prepared a summary comparison of the services offer by the City of Laurel to those currently provided in the PAA. (Exhibit L-19 RE-168) He determined the that the City would provide the following services not presently provided in the area sought to be annexed:

- Comprehensive planning
- Zoning

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specifically the difference in how this indicia should be addressed, depending on the level of development.

Sparsely populated areas:

The dominating fact here is that approximately 90 percent of the area to be annexed is undeveloped at this time. Concededly there is no immediate need for municipal services in the area. Yet in the past we have complimented the City of Jackson for annexing an area before it is fully developed. See *Dodd v. City of Jackson*, 238 Miss. 372, 118 So.2d 319, 330 (1960). *Matter of Extension of Boundaries of City of Jackson*, 551 So.2d 861, 867 (Miss. 1989)

Densely populated areas:

The area immediately North of the City limits is densely populated and no serious argument can be advanced against the need for municipal services in that area." *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1177 (Miss. 1994)

[62] *Extension of Boundaries of City of Ridgeland v. City of Ridgeland* 651 So.2d 548, *559*, (Miss. 1995)

[63] *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995)

[64] See *Matter of City of Horn Lake*, 630 So.2d 10, 21 (Miss. 1993) where the Supreme Court reversed the Chancellor's finding that there was no need for municipal level fire protection in an area served by a Class 10 volunteer fire department.

[65] *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995)

[66] *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995)

[67] *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995).

[68] *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1178 (Miss. 1994)

- Sign regulations
- Building codes
- A housing code
- Building inspections
- Electrical code
- Plumbing Code
- Mechanical Code
- Gas Code
- Fire Code
- Swimming Pool Code
- Unsafe Building Abatement Code
- Sewer Ordinance
- Contractors Examination, Licensing and Bonding
- Mosquito and pest control

In addition the City of Laurel would immediately provide significantly greater police protection. The City of Laurel has 61 sworn officers while the sheriff's department has only 60 officers to serve all of Jones County.[69] In year one following annexation Laurel will add three patrol officers, one juvenile officer, one civilian clerk and two dispatchers.. In year three they will add three additional patrol officers.

Fire protection will improve significantly. On annexation the areas fire insurance ratings will improve to a class 5. Currently the area is rated class 8 and class 10. This will result in significant rate savings to the citizens in the area sought to be annexed.

Fire protection service will be provided by a full time paid professional fire department. In the first year following annexation, the City will purchase a tanker truck to immediately serve areas without adequate fire flow. A new fire station will be located in the PAA in year 2. It will be staffed by 10 fulltime professional firefighters and will house not only the new tanker truck, but also a new class A pumper. While Laurel appreciates the dedication of volunteer firefighters, it is undisputed that better trained and better equipped full time firefighters will improve fire protection. See Exhibit L-78 (RE-856), L-40 (RE-706).

Traffic maintenance will be upgraded to municipal standards. Two new traffic maintenance

[69] 693.9 square miles.

technicians will be hired and equipped the first year. Traffic signage will be upgraded. Exhibit L-78, Page 11 (RE – 764b). Street maintenance will be improved. In year one two equipment operators and two skilled laborers will be hired and equipped. L-78, page 12 (RE-865) Additional personnel will be hired and equipped in the first year following annexation to provide for improve drainage. L-78, page 14 (RE-866). Animal control services of the City would be extended into the proposed annexation area. In year one a new full time and a part time animal control officer will be hired and equipped. L-78, page 15 (RE-866a). Improved parks and recreational services will be made available to the proposed annexation area. The City Council has committed to additional personnel and equipment. L-78, page 19 (RE-870).

The City Council has committed to a program to improve both water and sewer service to the proposed annexation area. Exhibit 94-B shows a detailed plan for the provision of water service, capable of providing not only domestic water but fire flows to the proposed annexation area. It is significant to note that 63% of the dwellings in the original annexation area are already served with water by the City of Laurel. 84% of the potential commercial connections already receive water from the City of Laurel. In the enlarged annexation area, 53% of all potential residential customers are already receiving city water. Sixty six percent of the commercial customers are served by city water.

Similarly, a detailed plan to provide sewer service to the proposed annexation area has been developed. Exhibit 75B (RE –855) sets out in map form that plan in detail. As with water many of the residents of the PAA are already provided with sewer service by the City of Laurel. Laurel serves 877 dwellings in the PAA with sewer (33%). Twenty five (17%) of the commercial establishments are served.

Both the water and sewer plans call for phasing of services. The City has committed to complete Phase I (lines shown in red) within the first five years following annexation. The City has examined existing conditions and development patters and there is a present need for utility services

to be provided in Phase 1. **THE CITY HAS ABSOLUTELY COMMITTED TO COMPLETE PHASE 1 IN THE FIRST FIVE YEARS.** Phase 2 may or may not be required in the first years. Portions of Phase 2 may well be constructed in the first five years. Portions may not. Development trends and patterns will determine the need and economic feasibility of construction of Phase 2. It is, however, extremely important that overall planning for the extension of utilities be in place. Doing so permits the construction of properly planned utility facilities as needed. Duplication and improper design decision are minimized by long range planning. Laurel has in place appropriate planning and zoning ordinances and codes to guide and direct development so as to permit long range utility planning to be effective. The combination of effective planning and effective land use ordinances is important to prevent the hodge podge of development that frequently occurs on the periphery of cities where counties fail to implement proper planning and zoning.

The Mississippi Rating Bureau has assigned either a Class 8 or Class 10 to all the PAA lying outside the City of Laurel.. Class 10 is the worst rating available in the state. The area within the City of Laurel is rated as Class 5, a substantially better classification. (See Exhibit L-27). RE –172. Larry Carr testified that the Class 5 rating will immediately be provided to all areas of the enlarged City within five road miles of responding station. This will result in an immediate reduction in fire insurance rates for many of the property owners.

The Police Chief testified as to the need for regular municipal police patrol in the area sought to be annexed. He described conditions, which indicated the need for municipal level police protection in the area. (See also testimony of Michael Slaughter Exhibits 62 (RE-808), 63 (RE-809) and 64 (RE-854). He surveyed the need for traffic law enforcement by having radar check run. In addition officers monitored compliance with stop signs. Chief Johnson testified that through the use of a revised patrol beat system his department could meet the need for municipal police protection in the PAA.

Though it appears Jones County has been progressive in many areas, the evidence

demonstrates that they simply cannot and do not provide service at a municipal level. See Exhibit L-78. RE – 856. Laurel has in place a program to improve services across the board.

The Chancellor found that the residents within the PAA contend that they have all the services they need. This is quite similar to the situation in the recent Madison annexation. There the Mississippi Supreme Court said:

> The proposed annexation area at issue is not totally lacking in the services that can be provided by a municipality. Some residents of the proposed annexation area favored annexation in order to obtain municipal services while others opposed annexation, claiming no need of municipal services. As noted in *City of Columbus,* 644 So.2d at 1178, this factor deserves little consideration under these particular circumstances. *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison,* 650 So.2d 490, 502 (Miss. 1995)

The Chancellor clearly misapplied the law in his consideration of this factor. First it is important to note that the Chancellor's conclusion that one cannot say with certainty what the residents of the proposed annexation area will receive for their tax dollars. The Chancellor makes the oft repeated mistake of judging what will be received for tax dollars with when water and sewer will be provided. This is clearly contrary to the evidence in this case and fundamental tenants of municipal operation. The evidence was uncontroverted that water and sewer provided by the City of Laurel are funded not from tax dollars but rather from user fees. **IF YOU DON'T HAVE CITY WATER SERVICE YOU DON'T PAY FOR IT. IF YOU DON'T HAVE CITY SEWER SERVICE YOU DON'T PAY FOR IT.** Taxes pay for the services described in Section 4 of Laurel's ordinance. The Services and Facilities Plan (Exhibit L-59, RE - 807) sets out in detail when each of those services will be provided. It contains a detailed plan for phasing in each service, setting out the personnel and equipment necessary to perform such services.

In a number of recent cases, this Court has rejected the very argument adopted in the Chancellor's opinion. Recently this Court summed up those cases as follows:

> The Objectors argue that the City's financial plan is inadequate since the plan calls for improvements and the addition of services over the next five years. Testimony at trial indicated that given the City's financial stability these improvements and services may be instituted much sooner. This Court has approved

similar plans with time periods extending as long as five years. In the case of *In re Extension and Enlargement of the Mun. Boundaries of the City of Biloxi*, this Court stated that "[p]lans that call for extension of services into annexation areas when economically feasible are not 'per se unreasonable.' " 744 So.2d at 282. *See also Town of Mantachie,* 685 So.2d at 729 (citing *City of Columbus,* 644 So.2d at 1182). In the case of *In re Extension and Enlargement of the Mun. Boundaries of the City of Biloxi,* this Court approved an improvement and services plan which outlined the installation of sewer and water lines in the annexation area over the next five years. 744 So.2d at 282. Additionally, here much of the area in the PAA already has City water and sewer lines. Even the "cut out" area that Objectors argue should be excluded from annexation is served by City water. And those "cut out" area residents would see a reduction in their water bill if the annexation is completed due to the elimination of a water surcharge fee placed on non-residents who use municipal water services. *In re Enlargement and Extension of Boundaries of City of Macon* 854 So.2d 1029, 1040,1041 (Miss.,2003)

Most recently this Court addressed this issue as follows:

> . . . the residents and property owners of the DAA and BAA will receive valuable services in return for the additional taxes. These services include police protection, fire protection, public works, and improved street and drainage maintenance, paving of streets, street lighting, administration of municipal level code enforcement, and municipal level planning and zoning. **Also, water and sewer needs will be extended where necessary and economically feasible.** [Empahsis Added] *In re Enlargement and Extension of Mun. Boundaries of City of D'Iberville* 867 So.2d 241, 258 -259 (Miss.,2004)

We respectfully submit that this is precisely the situation here. This factor favors annexation.

J. NATURAL BARRIERS

The Chancellor found:

See, on page 24 above, this Special Chancellor's finding in regard to the "Limitations Due to Geography and Surrounding Cities" factor, which is incorporated here by reference. This indicium weighs in favor of annexation into all areas of the P AA.

The Chancellor committed no error on this indicia.

K. IMPACT ON VOTING STRENGTH OF PROTECTED MINORITY GROUPS

The Chancellor found:

> Mr. Lewis Goins, an African-American resident of the area proposed to be annexed, and Mr. James Jones, an African-American resident of the City of Laurel, a former president of the Laurel and Jones County Chapter of the NAACP, testified in opposition to the proposed annexation by the city of Laurel.
>
> This satisfies the requirement set forth in *Extension of the Boundaries of the City of Columbus,* 644 So.2d 1168, 1180 (Miss. 1994) and this issue is properly before this Special Chancellor.

Exhibit L-27 reflects census data that shows that the racial composition of the City of Laurel was 59.4% (10,919) non-white and 40.6% (7,474) white in 2000. The proposed annexation would bring into the City of Laurel a population that is 73.2% white and 26.8% non-white. If the annexation of all four areas was approved, the resulting change in population would be 51.2% non-white and 48.8% white, reducing black voting strength within the City of Laurel.

In the Pendorff parcel only 22 (3.2%) of the 691 citizens are African-America. The population of the Pendorff parcel only makes up 11.2% of the PAA.

The Western parcel has little or no impact in minority voting strength because of the predominate non-residential character of the area. The population of the parcel is approximately 320.

The City of Laurel's brief and the trial transcript do not reveal the specific racial make-up of the Shady Grove parcel. The Shady Grove is by far the largest parcel sought to be annexed in the P AA, having at least a population of 4,500. It is right to assume that the racial make-up of the Shady Grove parcel would be substantially similar to the percentages given for the entire PAA above.

The Sharon parcel was left out of the City of Laurel's discussion of the effect of the proposed annexation on minority voting strength. Jim Elliot, Sharon's expert, testified that his survey conducted in the Sharon parcel revealed that there were 124 houses in the parcel and that almost 100% of those were white. Page(s) 3752 of the Trial Transcript.

Expert Joe Lusteck testified that in his involvement in many annexation cases, this case involved the largest dilution of black voting that he had ever seen. Page(s) 3094 of the Trial Transcript.

It appears fairly clear that the City of Laurel by their proposed annexation would take the City of Laurel backwards in terms of minority voting strength. The annexation of the entire PAA would require this Special Chancellor to make an extensive determination of whether there is any discriminatory purpose to the annexation. Such a determination is not necessary under the circumstances in this case given that the entire PAA is not reasonable for annexation. The annexation of the Pendorff and Western parcels, as is dictated by this Special Chancellor's order, do raise any issue of the dilution of minority voting strength in the city of Laurel or discriminatory intent on the part of the city of Laurel. The combined population of these two parcels is 1011 people. Even if all of the of the people brought into the city of Laurel through he annexation of the Pendorff and Western parcels were white, which they are not, then the minority voting strength in the City would not be dramatically effected. The existing percentages would be 43.7 % white and 56.3% non-white.

The Chancellor was manifestly wrong in the conclusions that he reached. Upon reaching the conclusion that this factor weighed against the annexation the Chancellor proceeded to eliminate the Original North Area where the evidence was undisputed that the concentration of African American citizens resided. He granted the annexation of the Pendorff area which was almost entirely white. Only 22 of the area's 691 citizens were African American. Given the finding of the Court such a decision lacks logic.

The evidence established that the City of Laurel configured the proposed annexation so that no potential minority voters that were within any reasonable path of growth were excluded. Utilizing the 1990 census it was determined that within the existing city there were 9,719 whites (51.6%) and 9,108 (48.4%) non whites. As in many cities whites migrated to the areas on the periphery of the city during the decade of the 70's 80's and 90's. In 2000, the census showed that the number of whites had declined to 7,474 (40.6%) while the number of non-white residents had risen to 10,919 (59.1%).[70] The proposed annexation area had a population of 4504 whites (73.2%) and 1647 (26.8%) non-whites. Combined with the existing city the enlarged city would remain majority non-white – 11,978 (48.8% white) and 12,566 (51.2.% non-white). Those percentages dropped somewhat when the city was forced to add the balance of the Shady Grove Utility District. With that addition, the proposed annexation area became 73.2% white and 26.8% non-white. The enlarged city would remain majority non-white – 11,978 (48.8%) and 12,566 non-white (51.2%).

In addition to the raw numbers, it is useful to examine voting age population. Exhibit L-112, RE-821, presented by the City the voting age population changes which approval of the proposed annexation would cause.

Contrary to the claims of the objectors annexation may legally result in diminution of the voting strength of a protected minority. The United States Supreme Court has addressed the issue directly. In *City of Richmond, Virginia v. U.S.* 422 U.S. 358, 95 S.Ct. 2296 (U.S.Dist.Col. 1975) the Court held that even though post annexation population of city was 42% Negro as compared with 50% prior to annexation, annexation did not deny or abridge right to vote within Voting Rights Act of 1965.

> where plan changed at-large elections to a nine-ward system of choosing councilmen which included four wards each of which was more than 64% black, four wards which were heavily white and a ninth ward which had a black population of 40.9%;

[70] See Exhibit L-27. RE-172

> and that since Voting Rights Act of 1965 proscribes voting changes made with purpose of denying right to vote on racial grounds and controlling factor in action brought under Act was whether there were at present objectively verifiable, legitimate reasons for annexation, whether administrative or economic, further proceedings were necessary to bring up to date and reassess the evidence bearing on issue, since Special Master and District Court did not give adequate consideration to evidence in case in deciding whether there were presently justifiable reasons for annexation which took place on January 1, 1970. *City of Richmond, Virginia v. U.S.* 422 U.S. 358, 95 S.Ct. 2296 (U.S.Dist.Col. 1975).

In reaching this conclusion the Court stated "it would be difficult to conceive of any annexation that would not change a city's racial composition at least to some extent." *City of Richmond, Virginia v. U.S.* 422 U.S. 358, 368, 95 S.Ct. 2296, 232302 (U.S.Dist.Col. 1975).

The Court went on to say:

> It would not matter that the annexation was essential for the continued economic health of a municipality or that it was favored by citizens of all races; because if the demographic makeup of the surrounding areas were such that any annexation would produce a shift of majority strength from one race to another, a court would be required to disapprove it without even considering any other evidence, and the municipality would be effectively locked into its original boundaries. This Court cannot agree that this was the intent of Congress when it enacted the Voting Rights Act.'354.Supp.,at1030 *City of Richmond, Virginia v. U.S.* 422 U.S. 358, *369, 95 S.Ct. 2296, 2303 (U.S.Dist.Col. 1975). 2302 254

> In short, annexations do not violate Section 5 of the Voting Rights Act if:
>
> - The purpose is not discriminatory
> - "there are now objectively verifiable, legitimate reasons for the annexation" *City of Richmond, Virginia v. U.S.* 422 U.S. 358, *375, 95 S.Ct. 2296, 2306 (U.S.Dist.Col. 1975)
> - wards are used to preserve voting strength of protected minorities

The United States Supreme Court recently summed up the rule as follows:

> Appellants point out that we did give the purpose prong of § 5 a broader meaning than the effect prong in *Richmond v. United States,* 422 U.S. 358, 95 S.Ct. 2296, 45 L.Ed.2d 245 (1975). That case involved requested preclearance for a proposed annexation that would have reduced the black population of the city of Richmond, Virginia, from 52% to 42%. We concluded that, although the annexation may have had the effect of creating a political unit with a lower percentage of blacks, so long as it "fairly reflect[ed] the strength of the Negro community as it exist[ed] after the annexation" it did not violate § 5. *Id.,* at 371, 95 S.Ct. 2296. We reasoned that this interpretation of the effect prong of § 5 was justified by the peculiar circumstances presented in annexation cases:
>
> "To hold otherwise would be either to forbid all such annexations or

> to require, as the price for approval of the annexation, that the black community be assigned the same proportion of council seats as before, hence perhaps permanently overrepresenting them and underrepresenting other elements in the community, including the nonblack citizens in the annexed area. We are unwilling to hold that Congress intended either consequence in enacting § 5." *Ibid. Reno v. Bossier Parish School Bd.* 528 U.S. 320, 330, 120 S.Ct. 866, 872 (U.S.Dist.Col.,2000)

Here the City of Laurel clearly established the non-discriminatory purposes of the annexation. In fact much of the diminution is the result of the passage of House Bill 1730.[71] In passing, we note that this legislative act can only apply to the City of Laurel and it has been precleared.

> The Mississippi Supreme Court first mentioned this factor in 1989 in. *Bassett v. Town of Taylorsville* 542 So.2d 918, 920 (Miss.,1989). Since that time, it has never rejected an annexation as being unreasonable based on this factor.[72] This is true even when the voting strength of a protected minority has been diminished.

This factor favors the proposed annexation as configured. If a lesser annexation were warranted by this factor, the predominately white Pendorff area would have been the wrong area to grant. It could not militate against the annexation of the original Northern area. This is where the African American Population is concentrated. One can only be left with the feeling that clear error was committed.

L. PAST PERFORMANCE

The Chancellor found:

> Objectors allege that the past performance of the City has not been good because it has failed to provide sewer service to some residents and some commercial businesses because it was found not to be economically feasible. On occasions, there were incidents of raw sewage running out of manholes. Page(s) 275, 3414 of Trial

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[71] Section 14 of that act provides:

> This act shall take effect and be in force from and after the date is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. See Exhibit L-105.

[72] The Mississippi Supreme Court has considered at least 4 cases where minority voting strength was diminished. See *In re Extension of Boundaries of City of Hattiesburg* (Not yet reported, Decided Feb. 6, 2003), *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi* 744 So.2d 270 (Miss.,1999), *Enlargement and Extension of Mun. Boundaries of City of Meridian v. City of Meridian* 662 So.2d 597, 607 (Miss.,1995) (from 45.3% to 40.3%). *Matter of Extension of Boundaries of City of Columbus 644 So.2d 1168, 1180* (Miss.,1994) (dilution from 51% according to the 1990 census to an estimated 45%).

Transcript.

Objectors further allege that Laurel has failed to develop and maintain its infrastructure in the City and the area proposed to be annexed as well. The City has not put itself in a position to handle this annexation, which would more than double the size of the City.

The City acknowledged there were problems in the City, and always would be, but that they were being addressed. The City of Laurel has provided in a timely fashion for the capital improvements and municipal services required, and is dealing with problems common to all cities in a responsible manner. This indicium weighs in favor of the annexation of all areas of the PAA.

The Chancellor made the correct factual finding that the City of Laurel's past performance was good. He erred in limiting the impact of this indicator of reasonableness to the Pendorff area. His finding of fact supports the annexation as a whole.

M. FINANCIAL ABILITY Sec 37 of 56

The Chancellor found:

The city of Laurel has $10,000,000 set aside to pay for Phase I services that it intends to provide in the annexed areas. Page(s) 120 of the Trial Transcript. The Special Chancellor finds that the City has thoroughly briefed its present financial condition, bonding capacity, expected amount of revenue to be received from taxes in the annexed area, and the financial plan and department reports proposed for the implementing and fiscally carrying out the annexation.

However, the Special Chancellor has searched the transcripts from the previous proceedings and cannot find a break down of the cost of implementing Phase I in each parcel in the event that this Special Chancellor should grant a portion and deny the remainder. The Special Chancellor finds that it is the burden of the city of Laurel to provide such a breakdown of the costs of the annexation and, therefore, this indicium should weigh against the annexation of the entire P AA. If the annexation of any combination of the parcels is to be considered in light of the City's financial ability to provide services, this Special Chancellor finds that the annexation of the Pendorff and Western parcels is reasonable. The annexation of these two parcels would enable the City to focus its resources towards providing services only in these newly added parcels and would remove the doubt that any portion of the newly annexed parcels would not be provided services upon the completion of Phase II. The Special Chancellor puts these two parcels together because the Western parcel is small in size and the Pendorff parcel is in great need of the services that the City has to provide. Additionally, there is little or no opposition of the City's annexation of these areas.

Phase I will only provide "backbone" sewer service that might or might not be provided to areas within the Sharon parcel within 5 years. This "backbone" service may not provide any benefits even in the Phase II as all service will be provided in

the newly annexed areas upon the service being "necessary and economically feasible." Other services to be installed in the newly annexed parcels are water service, municipal fire protection, and trash pickup. The evidence showed that the City has no real idea of the cost of annexation or how the costs will be paid.

The evidence indicated that there are dwellings in the Shady Grove parcel that are already served with water and sewer by the city of Laurel. However, the annexation of the Shady Grove parcel would mean that the City would have to take over the obligations of the Shady Grove Utility District to provide water service. See Page(s) 78-79 of the Trial Transcript. The north portion of the area is very rural and providing sewer service to this northern portion would be costly and would not be a priority in light of other pressing needs within the other newly annexed parcels. The testimony of Stave Russell, the Fire Chief for the city of Laurel, gives a clear indication that the citizens in the PAA will not be afforded municipal level fire services. See Page(s) 664-666 of the Trial Transcript. Greg Baylios, who operates the city of Laurel's two wastewater treatment plants and forty-four lift stations, testified extensively on the prospect of the PAA getting sewer according to the City's services and facilities plan. See Page(s) 1513 of the Trial Transcript.

The annexation of the Shady Grove would hamper the City in the meeting its need and increase the costs to its current residents. See testimony of Demery Grubbs, the City of Laurel's financial consultant, page(s) 1356 of Trial Transcript. The lack of thought put into the proposed annexation is evident in the testimony of David Overby, the City of Laurel's Director of Finance and City Clerk until 1999. Page(s) 1418-1419 of the Trial Transcript. David Dill, a CPA that does the city of Laurel's audits testified to the City's millage rates increases from 1995 to 2000. Page(s) 1469 of the Trial Transcript.

Based on the preceding discussion, the Special Chancellor finds that this indicium does not weigh in favor the reasonableness of the Shady Grove parcel because it would weaken the City's ability to follow through with its Phase I and II in the other newly annexed parcels.

The Chancellor erred. Factors the Courts have reviewed in assessing the indicia of reasonableness related to financial ability include the following:

- Present financial condition of the municipality.[73]
- Sales tax revenue history.[74]
- Recent equipment purchases.[75]
- The financial plan and department reports proposed for implementing and fiscally carrying out the annexation.[76]

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[73] *In re Extension of Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 728(Miss. 1996) *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1171 (Miss. 1994) *City of Greenville v. Farmers, Inc.*, 513 So.2d 932, 935 (Miss. 1987) *Matter of Extension of Boundaries of City of Ridgeland*, 388 So.2d 152, 156 (Miss. 1980) *Extension of Boundaries of City of Biloxi v. City of Biloxi*, 361 So.2d 1372, 1374 (Miss. 1978) *In re City of Gulfport*, 179 So.2d 3, *6*, 253 Miss. 738, (Miss. 1965)

[74] *In re Extension of Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 728(Miss. 1996)

[75] *In re Extension of Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 728(Miss. 1996)

- Fund balances.[77]
- The City's Bonding Capacity.[78]
- Expected amount of revenue to be received from taxes in the annexed area.[79]

The City of Laurel presented substantial credible evidence that it has the financial ability to make the improvements and provide the services set forth in its ordinance of annexation. The ordinance of annexation sets out the services the City of Laurel proposes to provide and the improvements the City proposes to make. The time frame for the improvements is set out in the ordinance. Laurel, however, has taken the additional step of adopting a much more specific plan of when and how it will provide each service. That plan is set out in Exhibit L-78, RE-856, the plan specifically details the additional personnel, equipment and cost of providing each additional service and improvement. It utilized methods which the testimony revealed as time tested for analyzing current and historic financial trends to project future revenues. The testimony revealed that the methodology utilized was quite conservative. It was testified that the plan likely underestimates revenues and overestimates costs. Based on this analysis the testimony was undisputed that the City of Laurel has the financial ability to make the improvements and provide the municipal level services it promises.

The City of Laurel presented two expert witnesses related to the issue of financial ability. Michael Slaughter, an urban and regional planner and registered professional engineer, testified that he preformed the analysis related to the general operations of the city. He was of the opinion that the City had the financial ability to keep its commitments.

Present financial condition of the municipality

The evidence establishes that the City of Laurel is in good financial condition. Demery Grubbs, an expert in the field of municipal finance testified at length in regard to the financial condition of the City. He testified:

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[76] Enlargement and Extension of Mun. Boundaries of City of Meridian v. City of Meridian, 662 So.2d 597, 611 (Miss. 1995) 178 So.2d 683, 685 253 Miss. 812, Bridges v. City of Biloxi, (Miss. 1965)
[77] *Extension of Boundaries of City of Ridgeland v. City of Ridgeland,* 651 So.2d 548, 558 (Miss. 1995)
[78] *In re City of Gulfport,* 179 So.2d 3, *6,* 253 Miss. 738, (Miss. 1965)
[79] *Bridges v. City of Biloxi, 178 So.2d 683, 685, 253 Miss. 812, (Miss. 1965)*

Q. Can you characterize for us the financial condition of the City of Laurel today as a result of your examination?

A. The City of Laurel is in excellent financial posture and has the ability to function as a viable municipal entity today [T-1319]

Mr. Grubbs offered this testimony with regard to the recent independent evaluation of Laurel's financial condition by Standard and Poor's.

A. This is a positive reflection of a municipality's financial posture. It's an indication that they're in good financial position. This rating does not rate them on one year. This is a trend that these people do, and it's based on a national rating. So they're compared on a national basis with cities similar sized, similar per capital income -- things of this nature. And so an "A" rating generates more interest in their bond and consequently lower interest rates.

Q. Have there been any changes over recent history in Laurel's bond rating?

A. They were upgraded from B -- triple "B" to an "A" rating within the last two years.

Q. And what, if anything, does the upgrade of their bonds indicate about current trends and financial strength?

A. Current trends are that it's positive. They continue to have positive growth, positive factors that indicate that they would be a good financial risk for the market. [T-1313, 1314]

Fund balances

The evidence is undisputed that Laurel is in good financial condition. It introduced its audits for the several years. (See Exhibits L-32 (RE-175), L-33 (RE-255), L-34 (RE-344), L-35 (RE-423), L-36 (RE-502) and L-38 (RE-638). In addition, the City offered into evidence its current and prior budgets. (See Exhibits L-11 (RE-937), L-12 (RE-144) and L-13 ((RE-158) The evidence reveals that Laurel had an unencumbered cash of $3,056,634 at the end of the 1999 fiscal year. (See Exhibit L-37 (RE-570) At the end of 2000 the general fund balance had increased to $3,299,533. (See Exhibit L-

38 (RE-638)[80]

Bonding capacity

The financial condition of the City of Laurel was reviewed in connection with the issuance of a $4.5 million dollar bond issue shortly before trial commenced by the independent municipal bond rating agency, Standard and Poor's. In the credit profile issued by Standard and Poor's on June 8, 2000, the following findings are set out:

The city's financial performance has been good. Five consecutive years of positive financial operations, including a modest $76,000.00 operating surplus in fiscal 1999, increased the general fund balance to about $3 million or 29.4% of expenditures. (See Exhibit L-9, RE-142)

At the time of trial the City of Laurel had $12,579,945 in remaining general fund bonding capacity under the 15% rule.[81] Only $3,460,000 in debt subject to the 15% rule was outstanding as

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[80] The fund balances set out above are general fund only. The combined fund balances of the City of Laurel grew from $7,807,064 at year end 1999 to $10,320,227 by year end 2000. (see Exhibit L-38, page 6 [2000 audit]).

[81] Municipal debt limits are set by § 21-33-303 of the Miss. Code as follows:

> No municipality shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonded indebtedness of such municipality, shall exceed either (a) fifteen percent (15%) of the assessed value of the taxable property within such municipality, according to the last completed assessment for taxation, or (b) ten percent (10%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. In computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness, heretofore or hereafter issued, for school, water, sewerage systems, gas, and light and power purposes and for the construction of special improvements primarily chargeable to the property benefited, or for the purpose of paying the municipality's proportion of any betterment program, a portion of which is primarily chargeable to the property benefited. However, in no case shall any municipality contract any indebtedness which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) of the assessed value of all taxable property within such municipality according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any municipality which are subject to annual appropriations therefor, or to bonds heretofore issued by any municipality for school purposes, or to contract obligations in any form heretofore or hereafter incurred by any municipality which are payable exclusively from the revenues of any municipally-owned utility, or to bonds issued by any municipality under the provisions of Sections 57-1-1 through 57-1-51, or to any special assessment improvement bonds issued by any municipality under the provisions of Sections 21-41-1 through 21- 41-53, or to any indebtedness incurred under Section 55-23-8.

of FY2000. (See Exhibit L-78, Table 3, RE-873) This does not take into account, the increase in bonding capacity attributable to the proposed annexation area. The added assessed value in the PAA would increase the City's general obligation bonding capacity to $16,387,017. (See Exhibit L-78, Table 3, RE –873)

Utilizing past history to project future assessed values, the City of Laurel's bonding capacity is expected to increase to $18,617,293 by FY2006 for the enlarged city.

Sales tax revenue history

Historical data indicates that the City of Laurel has experienced steady sales tax revenue increases. The sales tax rebate to the City of Laurel grew from $5,434,489 in 1996 to $6,084,351 in 2000. (See Exhibit L-78, Table 4, RE –873a) This trend is projected to continue into the future, with annual sales tax rebates reaching $7,222,815 in 2006 in the presently configured city. The projected tax revenues would reach $7,487,712 in the combined city and the proposed annexation area.[82]

The financial plan and department reports proposed for implementing and fiscally carrying out the annexation

As a part of its planning efforts, the City of Laurel prepared and adopted a specific financial plan for implementing and carrying out the proposed annexation. Exhibit L-78, RE-856, analyses on the cost of providing municipal services to the proposed annexation area on a department by department basis. It projects increased costs by department for the upcoming five fiscal years. It sets out specific personnel and equipment needs by department to extend municipal services into the annexation area. It programs in needed services by time.

All bonds issued prior to July 1, 1990, pursuant to this chapter by any municipality for the purpose of the constructing, replacing, renovating or improving wastewater collection and treatment facilities in order to comply with an administrative order of the Mississippi Department of Natural Resources issued pursuant to the Federal Water Pollution Control Act and amendments thereto, are hereby exempt from the limitation imposed by this section if the governing body of the municipality adopts an order, resolution or ordinance to the effect that the rates paid by the users of such facilities shall be increased to the extent necessary to provide sufficient funds for the payment of the principal of and interest on such bonds as each respectively becomes due and payable as well as the necessary expenses in connection with the operation and maintenance of such facilities.

[82] At the time of trial there were 150 businesses located in the PAA

Demery Grubbs, an expert in municipal finance, reviewed the services and facilities plan in detail. He testified:

Q. Sir, in closing, can you tell us -- characterize the financial ability of the City of Laurel with regard to the provision of municipal level services in the area it seeks to annex within the time frame set out in the services and facilities plan?

A. In reviewing the revenue of the current city, the revenues project that, for the proposed annexed area and matching that up with the services and facilities that the city has projected it will provide in the annexed area, the city has more than sufficient funds and the ability to finance those services and facilities as identified in the services and facilities plan. [Transcript Aug. Page 31].

Expected amount of revenue to be received from taxes in the annexed area

The cost of providing these services is then combined with the costs of services in the existing city and compared to anticipated revenues in both the existing city and the proposed annexation area. Based on this detailed review the City of Laurel has clearly demonstrated the financial feasibility of the proposed annexation.

It conducted extensive pre-annexation studies of the financial impact of the proposed annexation. (Testimony of Mayor, Michael Slaughter, Demery Grubbs.) During this study each of the factors noted above as having been considered by the Courts was reviewed. The conclusion was reached that the City of Laurel has the financial ability to make the improvements and provide the promised services. This indicia favors the reasonableness of the proposed annexation.

Assuming, arguendo, that the Chancellor was correct in his findings of fact, however, this factor should have weighed in favor of the annexation of all of the original annexation area. The Chancellor found:

When the annexation process began, Laurel was in good financial condition, and the cost of providing the improvements and municipal services as planned was well within the ability of the city to

meet. However, when the annexation area was increased substantially by the addition of the North Shady Grove area, the cost increased tremendously to approximately $36,000,000.

N. BENEFITS TO ANNEXATION AREA RESIDENTS FROM PROXIMITY

The Chancellor found:

> The City of Laurel is considered the "economic hub of Jones County." The evidence supports this conclusion. The record reflects that those outside the City take advantage of the City's recreation program. *See* Exhibit L-56. The City provides the seat for county government, hospitals, churches and shopping. This factor favors annexation into all the parcels in question.

The Chancellor did not err in this conclusion.

O. IMPACT OF THE ANNEXATION OR OTHER IMPACT UPON RESIDENTS & LANDOWNERS IN THE ANNEXATION AREA

The Chancellor found:

> In balancing the City of Laurel's need to expand and the benefits and adverse impacts accruing to residents of the respective parcels petitioned from annexation, this Special Chancellor finds that the economic or other impacts greatly favor annexation of the Pendorff and Western parcel and weakly favors annexation of the Shady Grove and Sharon parcels.
>
> It is true that if the City of Laurel is considered the "economic hub of Jones County" then it is likely that all areas in the PAA would benefit from the economic and social benefits provided by annexation. However, the testimony of the respective experts Michael Slaughter and Jim Elliot indicate that there are considerations that should minimize the effect of this indicum of reasonableness for annexation to the Shady Grove and Sharon parcels. See the testimony of Mr. Slaughter and Mr. Elliot, pages 3686-3687 of the trial transcript, respectively. This factor favors the annexation of the Sharon and Shady Grove parcels, but to a much lesser degree.

In 1985 the Mississippi Supreme Court stated[83]:

> We have attempted to establish criteria[84] by which chancellors may gauge the reasonableness of an annexation. *Dodd v. City of Jackson,* 238 Miss. 372, 118 So.2d 319 (1960); *Extension of Boundaries of Horn Lake v. Renfro*, supra. These criteria require that the chancellor evaluate the services to be offered to the annexation area, the city's ability to offer those services, the city's need to grow and the needs of the area to be annexed. While the *Dodd* and *Renfro* criteria are helpful, they were never intended to be conclusive as to reasonableness. Other factors, including the interest of, and consequences to, landowners in the annexation area are relevant. The

[83] *Western Line Consol. School Dist. v. City of Greenville* 465 So.2d 1057, 1060, (Miss. 1985)

[84] "Criteria" became "indicia" in *Basset v. Taylorsville*, 542 So.2d 918 (Miss. 1989) and the cases that followed.

> economic and personal impact on these landowners is as important a concern as the city's need to grow. Only by reviewing the annexation from the perspective of both the city and the landowner can the chancellor adequately determine the issue of reasonableness. In short, the common thread that must run through any reasonableness criteria is fairness. An unreasonable annexation is an unfair one and, as fairness is the foundation of equity, an annexation cannot be both unreasonable and equitable. The converse is equally true for an annexation cannot be both inequitable and reasonable.

In the Columbus decision,[85] the Supreme Court restated the requirement as follows:

> Although we retain our "indicia" for the purposes of today's decision, we emphasize that fairness to all parties has always been the proper focus of our reasonableness inquiry. Thus, we hold that municipalities must demonstrate through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness.

In recent decision of the Mississippi Supreme Court discusses this factor as follows:

Additionally, the objectors argue that annexation will mean higher taxes for the people living in the PPA. The chancellor noted that cost/benefits were subjective and impossible to quantify, and that Hattiesburg would provide some services not provided by Lamar County. The chancellor was astute in his analysis when he stated that while Lamar County had an excellent Sheriff's Department, the City of Hattiesburg Police Department, with 1/10 the service area of the Lamar County Sheriff's Department and five or six time more personnel, certainly could provide excellent law enforcement coverage, plus a better fire protection rating in the PAA would result in lower fire insurance premiums, and the PAA would have highly trained professional fire personnel on duty 24 hours a day.

> The chancellor found that the citizens in the PPA would benefit overall from municipal services. . . .No balance sheet was provided to the chancellor quantifying the cost/benefit analysis and the chancellor rightfully found this area an impossible one to quantify. Moreover, "the mere fact that residents in the PAA will have to pay more taxes is insufficient to defeat annexation." *In re Enlargement and Extension of Municipal Boundaries of the City of Biloxi,* 744 So.2d 270, 284 (Miss.1999). Again, the chancellor's findings on this indicium are supported by substantial and credible evidence. *In re Extension of Boundaries of City of Hattiesburg* (Dec'd Feb 6, 2003, not yet reported)

The evidence reveals that the residents and property owners in the proposed annexation will receive valuable services in return for the additional taxes they will pay. The will have improved

[85] *Matter of Extension of Boundaries of City of Columbus,* 644 So.2d 1168, 1172 (Miss. 1994)

police protection, fire protection, emergency medical response public works, improved street and drainage maintenance, street lights, garbage and trash collection, paving of streets; improved cultural and recreational facilities, improved water and sewer service and opportunities, administration of municipal level code enforcement and municipal level planning and zoning.

Many of the residents of the PAA will receive cost reductions on water and sewer rates once they are annexed. Those paying outside rates will see a substantial reduction in costs. Those currently being served by another system will be served at a lower cost.

The City of Laurel prepared and offered into evidence analysis of the increased costs of taxes should annexation occur. See Exhibit L-29 Financial Impact on Agricultural Land, Exhibit L-30 Financial Impact on Residential Land (Class 10) and Exhibit L-31 Financial Impact on Residential Land (Class 8). Based on this analysis the residents and property owners will pay taxes, but at the same time will receive valuable services in return. In view of the increased level of services, this factor strongly supports the reasonableness of the proposed annexation.

Once again it is important to note that the Chancellor focused his determination on this issue almost exclusively on water and sewer. As previously noted these are utility services funded by user fees and not tax dollars. A major factor, which the undisputed evidence established was that the City of Laurel, is already serving both water and sewer to many of the residents and businesses that the Chancellor deleted. The evidence established that 1,378 (53%) residents in the proposed annexation area are already served with municipal water by the City of Laurel. Laurel already serves later to 99 of the 150 businesses in the area (66%). Laurel serves 877 dwellings in the PAA with sewer (33%). Twenty five (17%) of the commercial establishments are served. Even assuming arguendo that the Chancellor was correct about the uncertainty of the time in which the remainder would be served, such reasoning could not apply to those already served.

P. OTHER FACTORS

The Chancellor found with regard to Other Factors:

No other factors are necessary to consider for this Special Chancellor to reach a decision on the reasonableness of the City of Laurel's annexation into any areas of PAA.

CONCLUSIONS

The Chancellor erred in holding that local and private legislation required the annexation of all or none of the Shady Grove Utility District. This erroneous ruling forced the City of Laurel to seek to annex a substantially larger area than it originally sought. This in turn increased the costs and reduced the intensity of services the City could provide in the area it annexed. It meant that the City had to seek to annex lands that could only be described as rural. Perhaps this could be seen as an explanation for the Chancellor's decision to limit the area he permitted to be annexed.

The decision of the Chancellor in this case was legally incorrect. His decision is manifestly wrong.

Respectfully submitted this the 15th day of February, 2008.

CITY OF LAUREL, MISSISSIPPI
Appellant

By: _____
Jerry L. Mills, MB# [redacted]
Attorney for Appellant
City of Laurel, MS

Of counsel:

Norman Gene Hortman, Esq.
William S. Mullins, III
Hortman, Harlow Martindale Bassi & Robinson, PLLC
414 West Oak Street
P. O. Box 1409
Laurel, Mississippi 39441-1409

JERRY L. MILLS, ESQ.
[MB # 3324]
PYLE, MILLS, DYE & PITTMAN, P.A.
800 Avery Boulevard North
Suite 101
Ridgeland, MS 39157
Telephone: 601/957-2600
Facsimile: 601/957-7440

CERTIFICATE OF SERVICE

I, the undersigned attorney for the City of Laurel, Mississippi, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of foregoing Brief to:

Tim Hancock, Esq.
Patricia Hancock, Esq.
P. O. Box 963
Jackson, MS 39205

Robert Sullivan, Esq.
P. O. Box 45
Laurel, MS 39441-0045

Joey Fillingane, Esq.
109 Fairfield Drive, Suite 109
Hattiesburg, Mississippi 39402

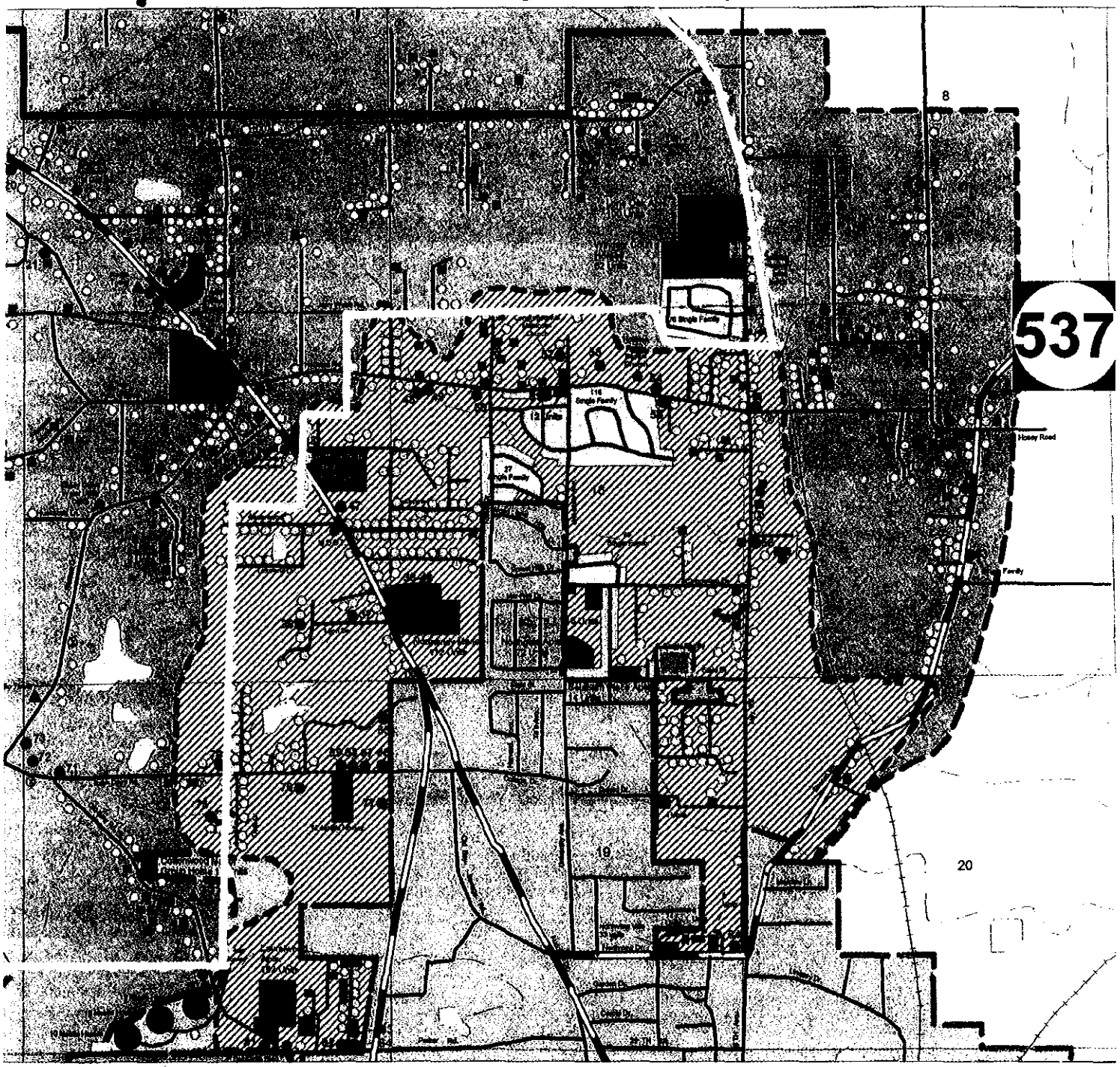
Attorney General Jim Hood
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205-0220

Honorable Charles Thomas
Senior Status Judge
Post Office Box 299
Pontotoc, Mississippi 38863-0299

This the 15th day of February, 2008.

Jerry L. Mills

APPENDIX A



Appendix A

The 2.2 square mile area referred to in this brief is the area in blue. Water is served by Laruel in the cross hatched blue area. Laural serves sewer in the solid blue area. The yellow line is the southern and western boundary of the Shady Grove Utility District.