

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 2006-AN-01431**

**IN THE MATTER OF THE ENLARGING,
EXTENDING AND DEFINING THE
CORPORATE LIMITS AND BOUNDARIES
OF THE CITY OF MERIDIAN,
LAUDERDALE COUNTY, MISSISSIPPI**

**TOWN OF MARION, MISSISSIPPI and
LAUDERDALE COUNTY, MISSISSIPPI**

APPELLANTS

VS.

CITY OF MERIDIAN, MISSISSIPPI

APPELLEE

**Appeal from the Chancery Court of Lauderdale County,
Mississippi, Trial Court No. 02-845-M**

**BRIEF OF APPELLEE
CITY OF MERIDIAN, MISSISSIPPI**

Oral Argument Requested

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CERTIFICATE OF INTERESTED

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.

Mayor and City Council, City of Meridian,
Mississippi

Board of Supervisors Lauderdale County, Mississippi

Mayor and Board of Aldermen The Town of Marion, Mississippi

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Dated this the 7th day of November, 2007.

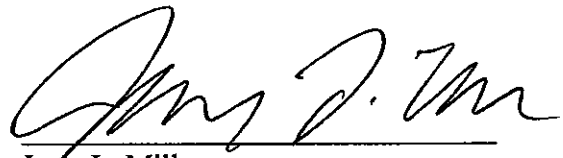

Jerry L. Mills

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I. INTRODUCTION

This case comes before this Court on the Briefs of Lauderdale County, Mississippi, and the Town of Marion. Lauderdale County is opposing an annexation by its largest city and undisputed economic hub. Marion is contending that it should be able to annex the territory. Meridian requests in considering the issues raised by Marion that it is important for this Court to take judicial notice of Marion's subsequent bankruptcy.¹ The annexation approved by the Special Chancellor in this case is reasonable. His finding of reasonableness is well supported by substantial credible evidence. The briefs in this case amount to little more than an attempt to have this Court disregard the evidence relied on by the Chancellor and substitute its judgement for that of the Court below.

II. STATEMENT OF THE ISSUES

Lauderdale County raises in its brief the issue of "Whether the Chancellor erred by finding the annexation in its entirety is reasonable under the totality of the circumstances. (Lauderdale County's Brief 1.) Marion raises a similar issue related only to Parcel One. The City of Meridian would note that the Chancellor did not approve a portion of the area sought to be annexed. Meridian has taken no cross appeal. Thus there would appear to be no issue with regard to the portion of the annexation area deleted by the Chancellor. We assume Lauderdale County is only challenging the portion of the proposed annexation area granted by the Special Chancellor.

¹ A Suggestion of Bankruptcy was filed in this matter on behalf of the Town of Marion. This matter was stayed pending disposition of the bankruptcy proceedings.

III. STATEMENT OF THE CASE

The City of Meridian last undertook a comprehensive annexation effort in the late 1980's and early 90's. The 1991 annexation effort² was originally configured to include a much larger area.³ However, the Court bifurcated the proceedings, with the proof going forward on a much smaller area. In 1995 the Mississippi Supreme Court affirmed the annexation of a reduced land area. The City of Meridian, rather than proceeding on the remainder of the 1991 annexation effort elected to devote more study to the matter.

The City of Meridian retained the firm of Bridge and Slaughter, Urban and Regional Planners, to assist them in their current annexation planning efforts. Over time, that firm conducted extensive studies related to all facets of the proposed annexation. (See Testimony of Mayor John Robert Smith. T-18, 19)

The City adopted its ordinance of annexation and a petition seeking approval was filed in this court. Notice was given in the time and manner provided by law. There are no procedural issues raised on appeal.

The area Meridian originally proposed for annexation was approximately 9.3 square miles.⁴ Prior to trial, the City of Meridian modified its proposed annexation plan to eliminate certain areas it originally sought to annex. This included an area to the north that was annexed by the Town of Marion after Meridian adopted its original ordinance. Additionally, the City of Meridian deleted from its original annexation effort the G. V.

² This is an annexation petition that was originally filed on April 24, 1991, in the Chancery Court of Lauderdale County. Chancellor George Warner recused himself and called on the Chief Justice of this Court to appoint a special chancellor. The case was ultimately heard and decided by Chancellor W.O. Dillard. Chancellor Dillard, on December 3, 1991, announced judgment in favor of the City of Meridian as to a part of the annexation territory. *Enlargement and Extension of Mun. Boundaries of City of Meridian v. City of Meridian* 662 So.2d 597 (1995), 598 -599 (Miss.,1995)

³ See blue outline on Exhibit P-5.)

⁴Exhibit P-21

“Sonny” Montgomery Industrial Park and other areas to the east.⁵ The demographic and financial evidence presented by the City of Meridian was adjusted for the territory reduced.

The territory sought to be annexed consists of four separate parcels. All areas are immediately contiguous to the existing City of Meridian and are accessible by existing and in use roads and streets. The parcels are identified on Exhibit P-4 (Basemap). The parcels are briefly described as follows:

Parcel 1 Northern Area: This area contains several large scale residential subdivisions. These include Rollingwood, Fair Oaks, Briarwood County Estates, and numerous others along Van Zyverden Road. The area also contains Northeast Lauderdale High School, Northeast Middle School, an apartment complex, a funeral home, churches, a country club, a large industrial complex, and assorted small businesses. This area is bounded on the north by Briarwood Road, on the east by eastern boundary of Sections 10 and 15 of Township 7 North, Range 16 East, on the south by Old Country Club Road and portions of the north ¼ Section of Sections 20 and 21 of the above referenced Township and Range, and on the west by the east boundary of Section 8 and portions of Section 17 of the above referenced Township and Range.

That portion of the North Area, most fully developed,⁶ has experienced explosive growth between the 1990 and 2000 United States Census. Exhibit P-20 indicates the North area experienced a population increase of 118% between 1990 and 2000, and a 137% increase in dwelling units over the same period. Testimony by Michael Bridge and supported by an existing land use survey, undertaken in March 2005⁷ indicates the population and dwellings for this area continues to increase.

Parcel 2 This area consists of a ¼ Section of land in Section 21, Township 7 North, Range 16 East, just east of Highway 39. The primary land use in this area is an elementary school. This area is surrounded on three sides by the City of Meridian. The other side abuts the Town of Marion.

Parcel 3 Industrial Area: This area lies east of the existing City, North of US Highway 11 and West of US 45. The primary land use is the Central Industrial park north of Highway 11. In addition there are two

⁵ See Exhibit P-4 (Base Map)

⁶ See P-20 (North Smaller Analysis Area)

⁷ See P-047

major industries east of Highway 45 Alternate (Old Highway 45). The area is served by Meridian's water and sewer and the City's Fire Department.⁸ Further, testimony included the need for enhanced drainage improvements and potential health hazards from standing water.

Parcel 3 Eastern Area: This area lies to the east of the existing City of Meridian and South of Highway 11. This area is sometimes referred to as the Sweetgum Bottom Area. This eastern annexation area is characterized by residential and industrial development. A significant portion of this area is under development of the Lauderdale County Industrial Park, as set forth on Exhibit P-047 (Land Use Map).

Parcel 4 Southwestern Area - This area lies to the southwest of the existing City. Its primary land use is the City of Meridian's soccer complex.

The entire area sought to be annexed is occupied by 30 businesses⁹. In 2000 there were 1427 persons residing in 592 dwelling units within the area sought to be annexed.¹⁰ There were 755 residential units with 1790 persons occupying the proposed annexation area (hereinafter PAA) in 2005.¹¹

The trial of this matter commenced on October 31, 2005 and continued over a period of approximately two and one half weeks. The Court took a half-day to view the proposed annexation area. Following the trial the Chancellor exclude a portion of Parcel 3 that lay to the east of the Town of Marion. The Chancellor approved the remaining portion of the proposed annexation. From this ruling this appeal is taken.¹²

IV. SUMMARY OF ARGUMENT

The annexation approved by the Special Chancellor is reasonable under the totality of the circumstances. The court below considered each of the indicia of

⁸ T-747

⁹ See Exhibit P-47 for list and location of each of the businesses.

¹⁰ See Exhibit P-21 (Demographic Data Sheet) T-747

¹¹ T-747

¹² Though the appeal in this case was taken by Eagle Point Homeowner's Association only the Town of Marion and Lauderdale County filed briefs. The objector joined in those briefs. The briefs of the Town of Marion and Lauderdale County differ primarily in that the appeal of Marion appears to be restricted to Parcel 1.

reasonableness so often discussed by this Court. He concluded that the annexation, as modified, was reasonable under the totality of the circumstances. There is no contention that the Special Chancellor applied the wrong standard of law in reaching his decision. Thus the appropriate standard of review is whether the Chancellor was manifestly wrong. The City of Meridian respectfully submits that the decision of the Special Chancellor is amply supported by substantial credible evidence and should be affirmed.

V. ARGUMENT

Annexation is a statutory procedure governed by the provisions of Title 21 Chapter 1 of the Mississippi Code of 1972. There is no issue raised in this appeal as to failure to comply with any of the procedural requirements set out in the Code.

A. STANDARD OF REVIEW

The standard by which the Chancellor's decision should be reviewed is well settled. Recently this Court restated the appropriate standard of review as follows:

. . .this Court's standard of review is well established:

This Court's standard of review for annexation 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. *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. City of Hattiesburg*, 840 So.2d at 81. *In re Enlargement and Extension of Mun. Boundaries of City of D'Iberville* 867 So.2d 241, 248 (Miss.,2004)

In this case, there is no contention that the Special Chancellor employed an erroneous legal standard. Thus, the only legitimate issue is: "Whether the findings of fact are manifestly

wrong, given the weight of the conflicting evidence presented at trial." Meridian would show that upon examination of each of the indicia and under the totality of the circumstances, the Chancellor committed no error when he approved a portion of the annexation.

B. IS THE ANNEXATION REASONABLE

Over the years, the Mississippi Supreme Court has recognized a number 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), (Miss. 1999)

The indicia of reasonableness are not separate and independent tests. Rather, they are indicators which are useful in determining the reasonableness of an annexation under the totality of the circumstances.¹³

C. The Indicia of Reasonableness

1. The municipality's need for expansion

The Special Chancellor found:

Need for Expansion. The first indicia of reasonableness is the municipality's need for expansion.¹⁴

When considering this indicia, there are numerous factors to be considered. They include whether or not spillover development has occurred into the proposed annexation area, (PAA) whether there is remaining vacant land within the municipality, whether the city has a need for vacant developable land, whether there is an increasing traffic count within the city, the limitations, if any, due to geography and surrounding cities, environmental influences such as floodplains or wetlands, the need to expand the city's borders to exercise control over development and to provide comprehensive planning for growth in the proposed annexation area, and any increase in new building permit activity. Exhibit P 7.

¹³*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 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)

¹⁴ RE – 421-424.

The evidence has shown that there has been significant spillover particularly into Parcel 1. Some spillover has also occurred in the Sweet Gum Bottom portion of the third annexation area. The Court is concerned, however, with that portion of Parcel 3 that lies west of U.S. Highway 45 and east of the eastern boundary of the Town of Marion. Testimony shows that there is no development within this area. Further, no development is anticipated and in addition, this would prohibit any expansion by the Town of Marion to the east.

Parcels two and four of the PAA, though small in area, deserves consideration.

Parcel two is completely surrounded by municipalities; three sides by the City of Meridian and the fourth side by the Town of Marion. The Court finds that this parcel is primarily a site for a public school.

Parcel four is also a very small parcel of land that is used primarily for a soccer complex. This soccer complex, though not requiring any tremendous or large assistance by the City, does, however, require water and sewer services and police and fire protection, particularly during soccer contests.

...
The Court must also consider whether or not spillover development has occurred in parcels 1 or 3 of the PAA.

Certainly, spillover has occurred in the northern annexation area as well as in the Sweet Gum Bottom area. An examination of Exhibit P-47 shows the spillover development that has occurred. The Court finds that this spillover is caused, in part, by the lack of developable land within the City of Meridian.

Meridian is an old city and its existing vacant residential land is not suitable for modern development. This is shown by the high number of building permits of both residential and non-residential conversions. The Court is going to consider the municipality's internal growth and its population growth together.

The glaring impediment to the City's need for expansion is the continuing loss of population. Meridian's 1960 population was 49,374. In 2003, the population had decreased to 39,559. Exhibits Obj 2,39. This decline can partly be explained by the lack of suitable developable land within the city. Testimony reveals that the City has experienced tremendous growth in its commercial, office and medical sectors and that this growth results in land absorption. This coupled with existing development has resulted in the use of almost all of the City's vacant and useable land.

During the nine years between 1995 and 2004, 742 new residential units were constructed in Meridian. Over 1,300 new non-residential units constructed during the same time period. Because of the lack of available, developable land within the existing City of Meridian, an unusual number of additions and conversions of existing buildings occurred during these years during these years in excess of 3,900 residential and over 1,300 non-residential conversions occurred during this period. (See Exhibits P. 10, 11, 12, 13)

Exhibit p-83 shows that the City of Meridian is 62.4% built out and developed and there remains a total vacant unconstrained land of 3,552 acres, which is 12.1%. A large portion of this 12.1% is scattered, isolated and in small parcels, not conducive to development.

While the City's population is in a decline, the Court is of the opinion that the City has shown that there does exist a need for expansion.

The Appellants argue that the Chancellor's determination that the City of Meridian has a need to expand is not supported by substantial credible evidence. The City of Meridian respectfully disagrees. In reaching this conclusion the Chancellor cited a number of factors that have been considered by the Mississippi Supreme Court in determining whether a municipality demonstrated a need to expand. These include:

- Whether "spillover" development had occurred into the proposed annexation area¹⁵
- Remaining vacant land within the municipality.¹⁶
- The City's need is for vacant developable land.¹⁷
- Whether the municipality is growing internally.¹⁸
- Need to maintain or expand its tax base, especially as growth and development occurs on its perimeters.¹⁹
- Whether the population of the municipality is increasing.²⁰

¹⁵ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, (Miss. 1995)

¹⁶ 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), (Miss. 1999)

¹⁷ *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1173 (Miss. 1994)

¹⁸ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, (Miss. 1995)

¹⁹ *Matter of Enlargement and Extension of the Mun. Boundaries of the City of Jackson*, 691 So.2d 978, 789, (Miss. 1997)

²⁰ *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), (Miss. 1999)

- Increasing traffic counts²¹
- Limitations due to geography and surrounding cities²²
- Environmental influences (i.e. floodplain, wetlands)²³
- Need to expand the city's borders to exercise control over development and to provide comprehensive planning for growth.²⁴
- Increased new building permit activity²⁵

It should be noted that the Special Chancellor did not recite all the evidence which indicated a need for expansion. Additionally, it is important to note that many of the indicia have overlapping considerations and are often discussed under more than one heading. Likewise the briefs of the objectors do not deal with a number of areas related to the issue of need for expansion which were addressed by the testimony. Meridian submits that it is important for this Court to have a balanced view of the proof which supports the decision finding a need for expansion.

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

The evidence in this case clearly leads to the conclusion that Meridian has demonstrated a need for expansion. Particularly to the North, it is virtually impossible to determine when one leaves the City and enters the proposed annexation area. Spillover into the proposed annexation area has occurred.²⁶

²¹ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999), (Miss. 1999)

²² *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999), (Miss. 1999)

²³ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999), (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)

²⁴ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, 553 (Miss. 1995)

²⁵ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, 553 (Miss. 1995)

²⁶ The Mississippi Supreme Court notes that annexations have been permitted where there is both large percentages of vacant land and a decreasing population.

While it is true that this Court has allowed annexations even though there is no significant population growth and/or a relatively high percentage of undeveloped land within the existing city limits, this presence of these factors should, at the very least, be an impediment to annexation. *Matter of. Enlargement and Extension of the Mun. Boundaries of the City of Jackson*, , 691 So.2d 978, 981 (Miss. 1997)

Precise examples of spillover development can be found by viewing conditions on the ground in conjunction with the data set forth on Exhibit P-047 (Land Use Map). Within the North annexation area, subdivisions literally adjoin each other within the city and the PAA, as well as within the City of Meridian and the Town of Marion. In the eastern PAA, the city and county are jointly developing an industrial park (the Lauderdale County Industrial Park) which literally spans from within the city into the PAA. The western PAA contains the city's own soccer complex, which is immediately adjacent to the city limits.

The argument of the Appellants seeks to apply a new and different standard than this Court has previously used. Unable to deny that spillover is occurring, Appellants advance the argument that the spillover is not attributable to Meridian. We suggest that the Chancellor, after having heard the evidence and viewed the development on the ground correctly concluded that spillover growth indicated a need for expansion. Utilizing the proper standard of review, the Chancellor cannot be said to be manifestly wrong on this issue.

Despite the continuing decline in population the annexations were approved in the following cases: *In re City of Jackson* 912 So.2d 961, (Miss.,2005), *Prestridge v. City of Petal* 841 So.2d 1048 (Miss.,2003), *In re Extension of Boundaries of City of Winona* 879 So.2d 966 (Miss.,2004)*Town of Crystal Springs v. Moreton* 95 So. 242 (Miss. 1923)

For example, the Court found the following with regard to the City of Madison in affirming its last annexation:

At the time of trial, more than fifty-eight percent (58.69%) of Madison was classified as undeveloped and slightly more than fifty percent (50%) of the city was considered vacant, developable land, i.e., land not located in floodways, wetlands, or water. This amounts to 2451.98 acres of vacant developable land, according to Madison's expert, Joe Lusteck. *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490,496 (Miss. 1995)

b. Whether the municipality is growing internally

This factor is closely related to the following two factors, (*Whether the population of the municipality is increasing*) and (*The City's need is for vacant developable land.*) The evidence presented relates equally to whether Meridian is growing internally, and the same is incorporated herein by reference.

c. Whether the population of the municipality is increasing

It was undisputed that the population of the City of Meridian has declined. This is not, as the Appellants' suggest a single determining factor as to whether a City needs to expand. In this case the City of Meridian addressed this issue directly. Michael Bridge testified extensively regarding the City's need to expand. Specifically Mr. Bridge observed that even though population decreased between the 1990 and 2000 U. S. Census significant land went into production for both residential and non residential uses. During the period between 1995 and 2004, 742 new residential units were constructed in Meridian together with over 1300 new non residential units constructed during the same time period. Because of the lack of available developable land within the existing City of Meridian an unusual number of additions and conversions of existing buildings occurred between 1995 and 2004.²⁷ In excess of 3,900 residential and over 1300 non residential conversions occurred during this period, which Mr. Bridge testified as being the result of unavailable land.²⁸ In his testimony, Mr. Bridge discussed P-83. This exhibit visually reflects the conditions and the suitability of vacant land for development purposes. This exhibit coupled with building permit data demonstrates the continued absorption of land into urban usage in Meridian. Bridge additionally testified that Meridian has, over time,

²⁷ T-643

²⁸ See P-10, P-11, P-12 and P-13 Testimony of Michael Bridge T-724, 725.

experienced a declining average household size²⁹ and that this phenomena results in a need for more housing per unit of population. Demographic changes as reflected in the U.S. Census of Population show that there is an increasing number of single person and two person households, necessitating more housing to accommodate a stable or decreasing population.

The undisputed testimony by Michael Bridge, Mayor Smith and Don Farrar, the Director of Community Development, was that the City of Meridian is a regional center for retail trade, medical care, industrial activity and employment for not only a multi-county area of up to 21 counties in Mississippi but drew customers, patients and employees from as far away as 65 miles including the western counties in Alabama³⁰. Meridian's need for additional land to accommodate growth transcends mere population growth or decline.

The Special Chancellor addressed this issue directly and correctly found that although population had declined in Meridian that it had established a need to expand. This conclusion was amply supported by substantial credible evidence.

d. The City's need is for vacant developable land

The finding of the Special Chancellor on this issue is clearly supported by substantial credible evidence

The testimony of both Mayor Smith and Michael Bridge established that the City of Meridian has very limited developable land resources.³¹ Meridian has remaining in the City Limits only 7,491 total acres of vacant land. Of this 4,289 acres lie in a floodplain

²⁹ The number of persons per household has decreased for each census period from 1970 through 2000. In 1970, each household in Meridian was occupied by 2.94 persons. By 2000 the number of persons per household had dropped to 2.39 T-719..

³⁰ P-19, T-38

³¹ T-58

and floodway and 323 acres of vacant land are in water. Another 2,879 acres are in severe slope areas and are thus constrained for future development. In absolute terms, Meridian is 62.4% built out. Of the vacant land only 12.1% of the City is vacant and unconstrained.³² This high level of build-out strongly indicates a need for expansion. Additional vacant developable land is needed in this area to accommodate reasonably anticipated development.

Specifically the Mayor testified that the City had experienced tremendous growth in its commercial, office and medical sectors and that this growth results in land absorption. This coupled with existing development, resulted in the use of almost all of the City's vacant and usable land resources. He further testified that the remaining vacant land was in scattered, isolated or small parcels not conducive to development.³³

The Mayor testified as to the forward looking, recently adopted City Comprehensive Plan which addressed the severe land constraints that limit the growth of the current City and its need to expand the City boundaries.

Director of Community Development, Don Farrar, testified as to the staffing and responsibilities of the Department of Community Development, including the aggressive program of demolitions of dilapidated housing in the City and how these demolitions related to vacant and available land for development did not result in functionally usable land because of their small land size and dispersed locations.³⁴

Farrar testified that the vacant land resources of the City were not suitable for modern land development because of their relatively small size, their location, flood plain restrictions and severe topography. Further, he noted that land developers were

³² T- 644

³³ T-163

³⁴ T-643, 644

constantly looking for and unable to find land of the size and location necessary for development. He specifically noted that the City was unable to find a large enough tract of land within the City to construct a major recreational facility (the soccer complex) and as a result constructed the facility within the proposed annexation area.³⁵ This soccer complex could not be built within the existing city because of a lack of suitable vacant developable land within Meridian. Both the Mayor and Mr. Farrar testified extensively regarding land absorption within the City resulting from development since 1992 together with land committed to new development.³⁶

The argument that the Chancellor erred in reciting the large number of residential and commercial permits for conversions approaches being frivolous. These data clearly indicate the necessity of reuse of existing buildings. This factor clearly relates to the issue of whether internal growth is occurring in the City.

e. Need to expand the city's borders to exercise control over development and to provide comprehensive planning for growth

The testimony supported the City of Meridian's need to annex to control growth on its borders. There are no planning or zoning ordinances in place in unincorporated Lauderdale County.³⁷ On the other hand, Meridian has adopted and implemented both planning ordinances and standard building codes.³⁸

Commercial and residential construction, particularly in the Northern Area (Parcel 1) has increased without any level of effective land use planning. Mixed and incompatible land uses are continuing to develop. Clearly, there is a need to direct growth in an orderly and serviceable fashion throughout the area the City seeks to annex. The

³⁵ T-642 See Also the testimony of Mayor Smith T-14

³⁶ See P-023 and P-024

³⁷ See Exhibit P-17

³⁸ P-9, P-17 and P-19

City of Meridian, through Exhibits P-55, P-56, P-57 and P-58 presented photographic evidence illustrating the harmful effects of urban development occurring without the benefit of municipal level land use controls.

f. Increasing traffic counts

It was undisputed that traffic counts in the areas have been increasing. Exhibits P-81 and P-82 demonstrate that traffic counts have increased over the last 13 year period for which information was available at the time of trial. The City of Meridian presented in map and tabular form historic traffic count data maintained by the Mississippi Department of Transportation. This data clearly reflects significant increases in traffic counts at all but one of the eight locations for which the data was available.

The argument of the Appellants' that a traffic count increase of only 16.4% to 59% in parcel one does not indicate a need for expansion borders on absurd.

g. 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 Meridian is the economic hub of the area. The area's primary employment base is located in Meridian. By contrast, the Town of Marion, with a population of 1,305 in the year 2000 was the home of 461 employed persons. Of these, only 30 were employed in Marion. Marion, Lauderdale County's only other municipality, is truly nothing more than a bedroom community.

Meridian's demonstrated need to maintain and expand its tax base indicates the reasonableness of the proposed annexation.

***Whether the area sought to be annexed is reasonably
Within a path of growth of the city***

The Chancellor found:³⁹

Path of Growth. The next indicia of reasonableness to be considered is path of growth.

As can be seen by plaintiff's Exhibit P-47, substantial spillover is evident in parcel one and the Sweet Gum Bottom area of parcel two. This spillover reflects the path of growth that exists in these areas.

Additionally, these PAAs are adjacent to the City of Meridian and are directly connected to the City by transportation corridors such as Highway 39, Highway 11, Highway 45, Interstates 20/59 and other public streets and rail connections. The proposed annexation area has experienced significant residential development that relies on services and facilities available within the City. For example, the PAA is virtually void of any retail commercial base. Residents of the PAA must then seek the goods and services elsewhere, which leads them into Meridian. Although the Town of Marion is an option for residents, the opportunities in Marion range from extremely limited to non-existent. The Court has previously discussed its findings concerning the City's limited area for growth and its need for expansion of its boundaries.

Factors the Mississippi Supreme Court has considered in the past with regard to the issue of "path of growth" include:

- Evidence that the PAA was immediately adjacent to the city.⁴⁰
- Evidence that the PAA was accessible by in use public streets, highways, and roads⁴¹
- Evidence that the PAA was experiencing spillover of urban development from the city⁴²

³⁹ RE 424-425

⁴⁰ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999) *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, 556 (Miss. 1995) Adjacency was undisputed. See Testimony of J. Gouras, Transcript November 15, 2005, page 173, 174.

⁴¹ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999)

⁴² *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999) *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, 556 (Miss. 1995)

- The limited area available for expansion⁴³
- The geography⁴⁴
- Development in the PAA⁴⁵
- Proposed subdivision development⁴⁶

The test with regard to “path of growth” is whether an area is in “a” path of growth, not necessarily a City’s primary “path of growth”. The Mississippi Supreme Court said:⁴⁷

According to *Matter of Boundaries of the City of Jackson*, this factor requires only a showing that the area to be annexed is, "in a path of growth, not necessarily the most urgent or even the city's primary path of growth." 551 So.2d at 865. Also, this Court has previously held that our law gives municipalities the discretion, based on convenience and necessity, to choose between various paths of growth by annexation. *Ritchie, et al. v. City of Brookhaven*, 217 Miss. 860, 65 So.2d 436 (1953).

Despite this clear announcement of the law, certain objectors consistently tried to show that Meridian has other paths of growth. The question as to which path of growth to annex is clearly within the legislative power of the City Council. They chose the path of growth which can reasonably be served at this time. That there are other paths of growth in no way diminishes the reasonableness of this proposed annexation.

a. Spillover - Development has spilled over from the existing City of Meridian into the area sought to be annexed.⁴⁸ Spillover growth is readily evident by viewing subdivisions under development, existing development and new construction. The land use maps

⁴³ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999)

⁴⁴ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999)

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

⁴⁶ *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 497 (Miss. 1995)

⁴⁷ *Matter of City of Horn Lake*, 630 So.2d 10, 19(Miss. 1993)

⁴⁸ See Photographs contained in Exhibit 60 and mapped on Exhibit 61

and field investigations of the PAA reflect this form of growth.⁴⁹ In places, one would not know when entering or leaving the city limits, absent signs depicting where the city limits begin and end.

b. Adjacency - The evidence establishes that the area sought to be annexed by Meridian is contiguous and adjacent to the existing City of Meridian. Adjacency was undisputed.⁵⁰ Further, the City's adopted Comprehensive Plan clearly shows patterns of residential development within the existing city and contiguous to the Northeast PAA.⁵¹ :

c. Interconnected by Transportation Corridors - The City of Meridian has historically grown into areas that are immediately contiguous and readily accessible to it by in use public streets.⁵² The PAA is directly connected to the City of Meridian by major transportation corridors including Highway 39, Highway 11, Highway 45, Interstate 20 / 59, as well as other public streets and rail corridors.⁵³ Meridian has formed two fire protection districts, is the first responder to fire calls within these areas, and provides backup fire responses to other portions of the proposed annexation area. Meridian has invested in this annexation area to the extent of constructing a recreational facility and providing water and sewer services to certain areas.⁵⁴

The objectors admitted that the areas sought to be annexed are connected to the existing city by existing and in use streets and highways.⁵⁵ The argument that "much of

⁴⁹ See Exhibit P-47 (Existing Land Use Map), See Also Exhibit P-77.

⁵⁰ See Exhibit P-5.

⁵¹ P-19, page 46b

⁵² See Exhibit P- 1 (Annexation History Map)

⁵³ See Exhibit P-4 (Base map)

⁵⁴ The Court had the opportunity to observe the proximity of this facility to the Northeast Annexation area on the view of the area.

⁵⁵ See Testimony of Jimmy Gouras:

Q. We are in agreement that there are existing and in use transportation corridors into each of the proposed annexation areas, are we not?

A. From Meridian and Marion, yes, More from Marion.

the PAA is not easily accessible from Meridian” (Lauderdale County’s Brief 13) totally ignores undisputed evidence.⁵⁶

d. Development in the PAA – The area sought to be annexed is occupied by 30 businesses⁵⁷. In 2000 there were 1427 persons residing in 592 dwelling units in the area sought to be annexed.⁵⁸ In 2005, 1790 people lived in the proposed annexation area in 755 residential units.⁵⁹ It was undisputed that substantial subdivision activity was occurring in the proposed annexation area at the time of trial.⁶⁰

The proposed annexation area has experienced significant residential development⁶¹ that relies on services and facilities available within the City. For example, the PAA is virtually void of any retail commercial base. Residents of the PAA must then seek the goods and services elsewhere, which leads them into Meridian. Although the town of Marion is an option for residents, the opportunities in Marion range from extremely limited to non-existent.

Transcript 1401

⁵⁶ Meridian does not understand the argument of the objectors related to the northern portion of parcel 3. The area that is complained of was eliminated from the annexation by the Chancellor.

⁵⁷ See Exhibit P-47 for list and location of each of the businesses.

⁵⁸ See Exhibit P-21 (Demographic Data Sheet)

⁵⁹ T-747

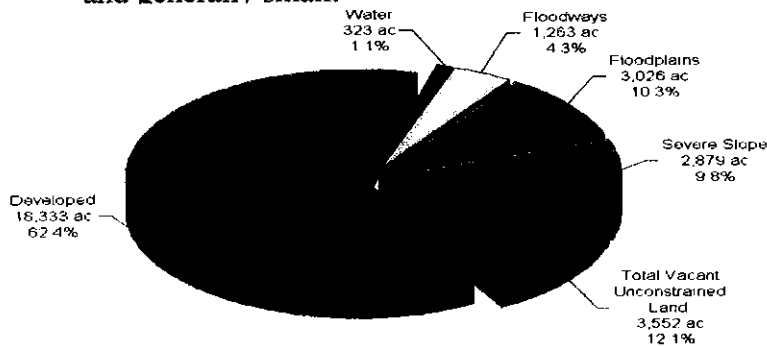
⁶⁰ See Testimony of Jimmy Gouras:

Q. We are in agreement that subdivision activity is occurring particular in the north annexation area, are we not?

A. We are. Transcript 1400.

⁶¹ The undisputed evidence at trial showed steady development in the areas sought to be annexed. There was significant population growth and land absorption through the construction of additional dwelling units between 1990 and 2000 in the proposed annexation area. The rapid pace of residential growth, particularly in the Northeast area, continued after the 2000 census. Between 2000 and 2005 the population of the proposed annexation area increased from 1427 persons to 1790. This represents a population increase of 25.4% in just five years. Additionally, the number of dwelling units increased by 163, going from 592 in 2000 to 755 in 2005. This represents a 27.5% increase in the number of dwelling units in five years. See Exhibit P-21, (Demographic Data Sheet).

e. **Limited Area for Growth** - The evidence reflects that there is little land for development left in Meridian. The only vacant parcels, for the most part, are scattered and generally small.



The City of Meridian needs to expand its' boundaries. There is a need for the City of Meridian to control development on its' periphery. Considerable residential development has occurred within the PAA. This trend can reasonably be expected to continue. The City of Meridian is growing internally both in residential and commercial uses. Land has been absorbed in each land use category within the existing City. The extent of building activity is reflected on the city's building permit reports.⁶² Lauderdale County has in place no zoning ordinances or other land use controls to prevent uncontrolled and unregulated development on the periphery of the City. The County does have in place floodplain development regulations and subdivision regulations, which alone do not adequately regulate development. Such uncontrolled and unregulated development has a detrimental impact upon Meridian.

Uncontrolled and unregulated development results in a discontinuity of infrastructure. Absent municipal standards for water, sewer, streets, drainage, street lighting, and other services, the delivery of municipal services in an "after-the-fact" manner greatly increases the costs of service delivery.

⁶² Building permit data is summarized in Exhibits P-10, P-11, P-12, P-13 and P-14.

The City of Meridian has very recently updated its comprehensive plan, including a study of existing land uses within the city. This study indicates that Meridian has over 60% of the land within the City in urban use, and only 12.1% of the land vacant and free from obvious development constraints.⁶³

3.

Potential Health Hazards from Sewage and Waste Disposal

The Chancellor found:⁶⁴

Potential Health Hazards from Sewage and Waste Disposal. What potential health hazards, if any, exist in the proposed annexation area from sewage and waste disposal? The soil in the entire PAA is classified as severely unsuitable for septic tank usage by the United States Soil Conservation Service. (See Exhibit 75) With the exception of Briarwood Waste Control Area and the two individual locations served by the Town of Marion, the entire PAA area sewage disposal system is by on-site sewage disposal systems.

Representatives of the Mississippi State Department of Health testified as to numerous and widespread failures of these on-site disposal systems in the PAA.

Additionally, the topography of the PAA causes the runoff to course through the City of Meridian, thus negatively impacting the City.

The only remedy for this sewage disposal problem is an installation of a central sewage system.

This indicia of reasonableness strongly favors annexation.

The Appellants assert that the Chancellor “placed great weight on sewage disposal problems within the PAA. Meridian suggests that this is because of the magnitude of the problems revealed by the evidence in the PAA.

Factors which the Supreme Court has recognized as supporting the reasonableness of annexation related to potential health hazards from sewage and waste disposal⁶⁵

⁶³ See Exhibit P-19.

⁶⁴ RE 425-426

include a large number of septic tanks in an area,⁶⁶ soil conditions which are not conducive to on site systems,⁶⁷ open dumping of garbage, standing water⁶⁸ and raw sewerage.⁶⁹

There was substantial evidence of potential health hazards from the disposal of solid waste in all portions of the PAA.⁷⁰ The evidence reveals Meridian provides a higher level of trash disposal than is currently available in the PAA.⁷¹

The soil in all of the proposed annexation area has been classified by the United States Soil Conservation Service as severely unsuitable for septic tank usage.⁷² In the unsewered portions of the PAA significant existing health hazards were shown to exist. Jim Westin with the Mississippi State Department of Health testified to numerous and widespread failures among the various types of on-site sewage disposal systems in use in the area. His testimony detailed the extent of the danger to persons residing in the

⁶⁵ It is important to note that an annexation may be reasonable in the absence of potential or existing health hazards. See: *Matter of City of Horn Lake*, 630 So.2d 10, (Miss. 1993). In that case as in part of the PAA here, central sewer adequately served the annexation area.

⁶⁶ *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999) *Matter of Extension of Boundaries of City of Jackson*, 551 So.2d 861, 866 (Miss. 1989)

⁶⁷ *In re Extension of Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 727 (Miss. 1996)

⁶⁸ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, 558 (Miss. 1995) *City of Greenville v. Farmers, Inc.*, 513 So.2d 932, 935 (Miss. 1987)

⁶⁹ *City of Greenville v. Farmers, Inc.*, 513 So.2d 932, 935 (Miss. 1987)

⁷⁰ The objectors did not seriously contest this issue. Their planning consultant Mr. Gouras admitted that there were potential health hazards in the area. He testified:

Q . . . do you have and opinion as to whether there are potential health hazards from sewage and waste disposal in the annexation area?

A. Yes, sir, I do.

Q. What is that opinion?

A. There are some potential health hazards in the area sought to be annexed. Those – some are based on testimony from Mr. Weston with the health department, there are failing septic tanks in the area sought to be annexed. There are also some garbage, illegal dumping of garbage that occurs in the annexation area. T1402

⁷¹ Exhibit P-17

⁷² See Exhibit 75.

proposed annexation area. He testified to potential health hazards ranging from unpleasant to deadly. His un-refuted testimony was that even if a person maintained their own system properly, they were in danger from the discharge of a neighbor's system.

Mr. Westin's testimony detailed numerous specific examples of failing systems throughout the area.⁷³ He testified that the only real answer is the installation of central sewer. Additionally, the testimony of Michael Bridge established that the drainage pattern in the PAA is such that the citizens of the existing city are threatened by improper discharge of raw sewage in the PAA.⁷⁴

There are potential and existing health hazards in the area sought to be annexed by the City of Meridian. Health hazards from both solid waste disposal and sewage disposal exist throughout the PAA. These sites were identified through field investigation.⁷⁵ The soil characteristics in the PAA are not conducive to the proper operation of on site wastewater disposal systems and evidence of the failure of such systems is evident throughout the PAA.⁷⁶ The topography of the PAA is such that the City of Meridian is negatively impacted by runoff from both solid waste and sewage from the area sought to be annexed.⁷⁷ The City has appropriate codes and ordinances addressing these problems. Additionally, field surveys identify numerous examples of potential mosquito infestation sites within the PAA.

⁷³ See Exhibit P-75

⁷⁴ See Exhibit P-25

⁷⁵ See Exhibit P-44 (Photos) Exhibit P-45 (map of photo locations)

⁷⁶ See Exhibit P-75 (Septic Tank Suitability Map)

⁷⁷ See Exhibit P-67 (Quadrangle map) See Also Exhibit P-25 (Map of Drainage Basins).

The fact that Meridian has had sewer spills does not diminish the fact that there are substantial health hazards in the PAA. While the problems in Meridian were addressed, those in the PAA only grow worse. This indicia weighs strongly in favor of the reasonableness of the annexation of the area.

4.

The Municipality's Financial Ability to Make the Improvements and Furnish Municipal Services Promised

The Chancellor found:⁷⁸

Financial Ability. The next indicium is the municipality's financial ability to make the improvements and to furnish municipal services as promised.

The objectors' financial experts stated their inability to form an opinion as to Meridian's financial ability to make the improvements and furnish the municipal services promised in the absence of a capital improvements plan which the City does not have. He states that the lack of a capital improvements plan does not demonstrate the lack of financial ability but it lacks financial planning.

Both of the City's experts, however, have opined, based upon a detailed analysis of the City's operation, that the City has the financial ability to perform the promised services and made the improvements in a timely manner. Bridge, Mayor Smith.

These opinions were formed after the consideration of the present and financial condition of the City regarding expenditures and revenue, recent equipment purchases, revenues to be generated from the PAA, expenditures necessary to extend municipal services and facilities into the PAA, and interviews with the City's department heads, City officials and engineers have provided the basic information required to identify equipment and employees necessary to provide municipal level services and facilities to the PAA.

The City's existing and projected financial condition indicates that the City has the ability to provide the level of municipal facilities and services to the PAA. In addition the City has little bonded indebtedness compared to its legal debt capacity. Exhibit P6.

⁷⁸ RE 426-427

This indicia of reasonableness also favors annexation of the proposed area.

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

- Present financial condition of the municipality.⁷⁹
- Sales tax revenue history.⁸⁰
- Recent equipment purchases.⁸¹
- The financial plan and department reports proposed for implementing and fiscally carrying out the annexation.⁸²
- Fund balances.⁸³
- The City's Bonding Capacity.⁸⁴
- Expected amount of revenue to be received from taxes in the annexed area.⁸⁵

The City of Meridian 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 Meridian proposes to provide and the improvements the City proposes to make. The time frame for the improvements is set out in the ordinance. Meridian 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 P-2. The plan specifically details the additional personnel, equipment and cost of providing each additional service and improvement. It utilized

⁷⁹ *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)

⁸⁰ *In re Extension of Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 728(Miss. 1996)

⁸¹ *In re Extension of Corporate Boundaries of the Town of Mantachie*, 685 So.2d 724, 728(Miss. 1996)

⁸² *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)

⁸³ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So.2d 548, 558 (Miss. 1995)

⁸⁴ *In re City of Gulfport*, 179 So.2d 3, 6, 253 Miss. 738, (Miss. 1965)

⁸⁵ *Bridges v. City of Biloxi*, 178 So.2d 683, 685, 253 Miss. 812, (Miss. 1965)

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 established that the plan likely underestimates revenues and overestimates costs.⁸⁶ Based on this analysis the testimony was undisputed that the City of Meridian has the financial ability to make the improvements and provide the municipal level services it promises.

The City of Meridian presented expert testimony related to the issue of financial ability. Both Ed Skipper, the City of Meridian's Chief Financial Officer and Michael Bridge, an urban and regional planner, testified that they preformed the analysis related to the general operations of the city. They were both of the opinion that the City had the financial ability to keep its commitments.⁸⁷

The evidence is undisputed that Meridian is in excellent financial condition. It introduced its audits for the past several years.⁸⁸ The evidence reveals that Meridian had a healthy cash reserve at the end of the last fiscal year.

The City of Meridian has the financial ability to provide the services and make the improvements set out in its ordinance of annexation. The following factors in regard to Meridian's financial ability to provide services and deliver improvements to the proposed annexation area were examined:

- The present and historic financial condition of the City regarding expenditures and revenues.
- Recent equipment purchases.
- Revenues to be generated from PAA.
- Expenditures necessary to extend municipal services and facilities into PAA.

⁸⁶ See Testimony of Michael Bridge. T-814

⁸⁷ T-817

⁸⁸ See Exhibits P-29 (Audit 2000), P-30 (Audit 2001) P-31 (Audit 2002) P-32 (Audit 2003) P-33 (Audit 2004)

- Interviews with the City's department heads, City officials and engineers have provided the base information required to identify projects, equipment and employees necessary to provide municipal level services and facilities to the PAA.

Examination of the City's financial statements, budget, official statements, public utility rolls, assessed value, and bonded debt indicates that the City has the financial ability to make the improvements and extend the services as set out in its ordinance of annexation. Information gained from Lauderdale County land rolls and from the Mississippi Tax Commission identifies revenues to be produced from the PAA.

In addition to the information gathered from the sources set out above Michael Bridge utilized methodologies accepted in the planning profession for the projection of future revenues and expenditures for the City of Meridian.

- Review of historic tax and non-tax revenues.
- Trends in assessed valuation.
- Review of historic City expenditures.
- Review of alternate funding sources.
- Review and analysis of costs associated with the extension of services to PAA.
- Review and analysis of costs associated with the extension of improvements to PAA.
- Current level of development in the PAA.
- Current level of services in the PAA.
- Current level of facilities in the PAA.
- Reasonably anticipated levels of development in PAA.

When the City's existing and projected financial status is analyzed it supports the City's financial ability to provide appropriate levels of municipal services and facilities to the PAA.

In addition Meridian has little bonded debt in relationship to its legal debt capacity and substantial capacity for new debt. Meridian has an excellent bond rating. Standard and Poors, one of the nations leading municipal bond rating agencies has rated the City as

A+. Moody's rates the City as A2. Both agencies conducted independent analysis of the City's financial situation before granting these high credit ratings.⁸⁹

The City conducted extensive pre-annexation studies of the financial impact of the proposed annexation. 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 Meridian has the financial ability to make the improvements and provide the promised services. This indicia favors the reasonableness of the proposed annexation.

5. The Need for Zoning and Overall Planning

The Chancellor found⁹⁰:

The need for zoning and overall planning. Both the City of Meridian and the objectors recognize the need for zoning and planning in the proposed annexation area. Lauderdale County has no zoning ordinance, no building code. While the objectors state that the City's enforcement is ineffective and inadequate, as shown by the photographs contained in Exhibits 51 and 52. Many of these photographs are improperly identified, many do not show violations, and some are not located within the City of Meridian. These exhibits therefore provide questionable information. The Court therefore finds that while zoning and code enforcement may not be perfect within the City of Meridian, it is adequate and the City can certainly provide zoning and code enforcement much better than is provided to the PAA now. This indicia of reasonableness also supports annexation.

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.⁹¹ Many of the cases decided have

⁸⁹ See Exhibit P-6.

⁹⁰ RE 427-428

⁹¹ "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)

involved situations where there is no zoning in the county.⁹² The Supreme Court has addressed the need for zoning even though there is a county zoning ordinance in place.⁹³

There is a need for municipal level planning and zoning in the area sought to be annexed by the City of Meridian.⁹⁴ Lauderdale County has no zoning ordinance. The lack of such an ordinance has resulted in incompatible land uses within the PAA. Additionally, Lauderdale County has no building codes or other regulations to address the use and upkeep of property.⁹⁵ Field surveys and investigation reveal numerous examples of the need for code application and enforcement, situations of uncontrolled signage and subdivision deficiencies throughout the area sought to be annexed.

The city has in place appropriate municipal level zoning, planning and land use regulations to assure a more coordinated land development pattern as the PAA continues to develop.⁹⁶

It is important to the City of Meridian that proper planning and land use regulations are in place in the PAA.⁹⁷ The failure to properly plan and implement such

⁹² *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999) (Miss. 1999)

⁹³ 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.

⁹⁴ Even the objectors' planning expert had to admit that there is a need for planning in the proposed annexation area. On direct testimony Mr. Gouras stated: "Yes sir, there is a need for planning in the annexation area. There is no doubt. And I couldn't sit in front of you, your Honor, and say otherwise." T-1303.

Later he testified "I do recognize the need for overall planning in the area" T-1319

⁹⁵ See Exhibits P-55 (Map keying photos) Exhibit P-56 (Photos Need for Zoning), P-57 (Photos Subdivision Deficiencies) Exhibit P-58 (Map keying Subdivision Deficiencies to location in PAA).

⁹⁶ See Exhibit P-17 (City Services vs. County Services), Exhibit P-78 (Meridian's Subdivision Regulations), Exhibit P-89 (Meridian Zoning Ordinance)

planning has the potential to have a significant and adverse impact on Meridian and other lands adjacent to the PAA.

Lauderdale County has not adopted the tools necessary to permit the effective implementation of a level of planning activities appropriate to an area undergoing urbanization.⁹⁸

Lauderdale County lacks:⁹⁹

- i. A Comprehensive Plan
- ii. A Zoning Ordinance
- iii. Subdivision Regulations
- iv. Building Codes¹⁰⁰
- v. Electrical Code
- vi. Plumbing Codes
- vii. Fire Codes
- viii. Mechanical Codes
- ix. Other Basic Safety Codes

Urban-type development is occurring without appropriate land use or life safety codes in place. In addition, substantial building has occurred and is presently occurring in the proposed annexation area without the benefit of any building codes. The City of Meridian has adopted both zoning ordinances and building codes. Though the objectors attempted to show similar conditions in the existing city, most predate the ordinances.

⁹⁷ Throughout the course of this trial, the objectors sought to counter the need for planning and zoning with the argument that certain parts of the area were protected by restrictive covenants. This argument is totally and completely without merit. Restrictive covenants are localized documents and are no substitute for the overall planning gained by proper zoning. The objectors failed to recognize that covenants only cover specific areas (usually a subdivision). Covenants have no impact on what can occur on adjoining land. Covenants must be privately enforced, usually by neighbors. Covenants expire. In this case very little of the land area was subject to restrictive covenants. That area that is subject to covenants will not lose the protection they provide upon annexation.

⁹⁸ See Exhibit P-17 (City Services vs. County Services)

⁹⁹ Exhibit P-17.

¹⁰⁰ See Testimony of Jimmy Gouras testifying for the objectors "I couldn't sit in front of you with a straight face and say that there is not a need for building codes and that area would not benefit from building codes" T-1320.

The objectors attempted to show deficiencies in code enforcement and planning within the existing City of Meridian through a series of photographs. Before the testimony of the objector's witnesses were complete it became apparent to the Court that many of the proffered photographs were outside the existing city (including some in the proposed annexation area.) Additionally, the witness for the objectors claimed that code violations were demonstrated. However, the witness was generally unable to give the Court any information as to what codes were being violated. The witness did not know the current status of the subject of the photographs. The photographs shown by objectors were in fact of non-conforming uses. A number of the photos demonstrated one of the principal reasons this annexation is needed. The photos showed dead end roads designed and constructed under Lauderdale County standards. Many of the photos were of legal non-conforming uses. The City called Mary Jane Sharp, City Building Official, in rebuttal to this testimony. She testified that:

- Many of the photographs were of condemned buildings (the processes the City had in place was working)
- The building in the photograph had been demolished (the process the City had in place had already worked)
- That enforcement action was in progress
- That the photograph demonstrated no violation of the codes.

This indica favors the reasonableness of the proposed annexation.

6. The Need for Municipal Services in the Area Sought to be Annexed

The Chancellor found:¹⁰¹

Need for Municipal Services. The need for municipal services within the PAA is the next criteria to be considered. The Court notes that while Lauderdale County currently provides police and fire protection in the PAA, it is by the Sheriff's office which provides approximately .8 sworn officers per one thousand residents while with annexation the City would provide approximately 2.6 sworn officers per one thousand

¹⁰¹ RE 428-429

residents. Exhibit P-62. The City is also equipped with radar and can more effectively control traffic in the PAA.

Municipal fire protection is another City service which would be highly beneficial to the PAA. The PAA is served by several fire districts that are manned by volunteer firemen. These fire districts have fire ratings from Class 6 to Class 9. One area that contains Northeast Elementary School is in no fire district and therefore has a fire rating of Class 10.

The City of Meridian has a Class 4 rating and upon annexation many properties in the PAA would immediately gain a reduction in their fire insurance rates. See Exhibit P-38,39, 40 and 41

The Court has already considered the need for sewage collection and treatment in the proposed annexation area. This need is due to the soil not being conducive to on-site septic tank usage and the lack of sewage collection and treatment, except for the limited areas served by Briarwood Waste Control and Trust Developers, Inc. and the City of Marion.

For the above stated reasons, the Court finds that this indicia of reasonableness favors annexation.

Among the factors the Supreme Court has considered related to this indicia include¹⁰²:

¹⁰² 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 the Mississippi Supreme Court provided an excellent analysis of the proper standard to be applied:

¶ 47. The chancellor found that the PAA is in need of municipal services and that the Biloxi annexation would provide parcel A with three new fire stations in the first five years, a lower fire rating, enhanced police patrols, and the installation of several park facilities. Harrison County contends however that, based upon the testimony of Harrison County Sheriff Joe Price, Harrison County Fire Chief George Mixon, Harrison County Board of Supervisor President Bobby Eleuterius, and planning expert Michael Bridge, fire, utility, garbage collection, road and street maintenance and police services are more than adequate, if not already at a municipal level.

¶ 48. Although Biloxi's comprehensive plan does not detail plans for more remote undeveloped areas, Lusteck testified that these will be served when needed and economically feasible. The Objectors criticize this lack of planning. However, we have held that "[p]lans that call for extension of services into annexation areas when economically feasible are not 'per se unreasonable.'" *Mantachie*, 685 So.2d at 729 (citing *Columbus*, 644 So.2d at 1182).

¶ 49. As these utilities are revenue-driven enterprises, this approach makes sense. Biloxi intends to spend approximately \$12 million in water and sewer investments

- Requests for water and sewage service.¹⁰³
- Plan of the City to provide first response fire protection¹⁰⁴
- Adequacy of existing fire protection.¹⁰⁵

in the first five years. We have held that "five year plans" such as Biloxi's are reasonable. See *Columbus*, 644 So.2d at 1182; *Jackson*, 551 So.2d at 861. Also, in *Madison*, this Court found that the PAA needed municipal services based in part upon testimony from the mayor that the city could provide quicker police response, additional police protection, first level fire protection, and overall planning. *Madison*, 650 So.2d at 501-02. The evidence presented in this indicium and throughout this litigation shows that parcel A will receive enhanced municipal services in accord with this Court's language in *Madison*, 650 So.2d at 494 (residents of the PAA will receive something of value in return for their tax dollars). Thus, we find that this indicium weighs in favor of the reasonableness of annexation. *In re Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270 (Miss. 1999), (Miss. 1999)

This Court has addressed 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)

¹⁰³ *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*
651 So.2d 548, 559, (Miss. 1995)

¹⁰⁴ *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995)

¹⁰⁵ 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. The Court said:

Mack Bowles, a former volunteer of the DeSoto Woods Fire Department, stated that the DeSoto department provides adequate fire protection for the DeSoto Woods area. Eric Allen, a resident of DeSoto Woods, also stated that he was entirely satisfied with the fire protection extended by the DeSoto Woods Volunteer Department. However, neither individual is a resident of the area Southaven proposes to annex.

Joe Shoemaker, a Superintendent of the Public Protection Department of the Mississippi State Rating Bureau, stated that the DeSoto Woods Volunteer Fire Department currently has a fire insurance rating of ten (10). This rating is on a scale of one to ten (10), with ten (10) being the lowest rating. Horn Lake has a fire insurance

- Plan of City to provide police protection.¹⁰⁶
- Plan of City to provide increased solid waste collection.¹⁰⁷
- Use of septic tanks in the proposed annexation area.¹⁰⁸
- Population density.¹⁰⁹

The territory sought to be annexed by Meridian is in need of municipal services or will be within the foreseeable future.¹¹⁰ Annexation by the City of Meridian is

rating of eight (8). Southaven, on the other hand, has a fire insurance rating of six (6), which means that its residents pay less for monthly fire insurance premiums.

The chancellor concluded that fire protection was the primary responsibility of DeSoto Woods, but the chancellor's decision failed to adequately weigh the importance of Chief Newton and Chief McCammon's testimony which seriously questioned the adequacy of the DeSoto Woods volunteer fire department. The chancellor also failed to properly consider the fire insurance ratings in Southaven's favor. See *Matter of Boundaries of City of Jackson*, 551 So.2d at 868. Thus, the chancellor's conclusion was not supported by the substantial and credible evidence.

¹⁰⁶ *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995)

¹⁰⁷ *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995)

¹⁰⁸ *Enlargement and Extension of Mun. Boundaries of City of Madison v. City of Madison*, 650 So.2d 490, 502 (Miss. 1995).

¹⁰⁹ *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1178 (Miss. 1994)

¹¹⁰ As is typical in annexation cases, the objectors presented testimony that they were satisfied with the services they already received. However, it is clear from the record that little investigation had been conducted to support this claim of adequate services. A prime example is contained in the testimony of Dr. Martin. He testified:

- Q. And sir, you've testified that your were satisfied with your fire protection, did you not?
- A. That is correct.
- Q. And to reach your level of satisfaction, I take it you didn't make any investigation as to what the real situation was with regard to fire protection?
- A. I'm not sure I understand your question. But I knew for a fact there was a fire station sitting at the corner of Van Zyverden Road and Briarwood Road.
- Q. When we drove by that fire station the other day, I noticed that all three doors were closed?
- A. That is correct.
- Q. Do you know if that station is manned?
- A. I can answer your question that the three doors were closed. **I cannot answer whether it's manned or not.** There was a pickup parked beside it.
- Q. So, in your investigation to determine that you were satisfied with your fire protection, tell us that you did to reach that conclusion, what evidence you made up your own mine of being satisfied with the fire protection, in your mind?
- A. The only objective evidence, other than the fact that the fire station is as I described it, is the confidence in the developer that platted the subdivision and responsible for putting the

reasonable. The parcels are primarily urban or urbanizing. Health hazards¹¹¹ and the need for municipal collection and treatment of sewage presently exist in the proposed annexation area.¹¹² Therefore, many of the problem areas previously identified can only be resolved by the provision of municipal level services.

The delivery of quality municipal services can be severely hampered if standards are not applied at the time of initial development. At present, development within the PAA is taking place under the jurisdiction of Lauderdale County, which has limited standards in place.¹¹³ The City has adopted the necessary building codes, land use regulations and development standards to provide for efficient delivery of services.¹¹⁴

infrastructure in place. There was – at the time we purchased our lot there was no water flowing in the subdivision.

Q. Do you know how many volunteer firefighters are engaged at that fire station near your house?

A. No, sir, I do not.

Q. Do you know what kind of equipment they've got?

A. No, sir, I don't.

Q. Do you know what kind of water pressure they're going to have when they get to your house?

A. I cannot tell you.

Q. Do you know what kind of training those fire fighters have?

A. I can tell you only in a general sense that they have been put through a course of training, both for fire fighting and homeland security, most recently.

Q. And sir, with that limited information you're satisfied with the fire protection you have are you not?

A. Yes, sir. T - 1067-1069.

Dr. Martin demonstrated satisfaction for a number of other services with a similar level of information as to adequacy, i.e. Police Protection at T-1070. [Emphasis Added]

¹¹¹ Despite the level of development in the proposed annexation area, Lauderdale County does not provide door to door garbage and trash collection. Meridian, on the other hand, provides door to door trash collection twice a week. See Exhibit P-17.

¹¹² See Exhibits P-44 (Photos of Potential Health Hazards from Solid Waste and Sewage) and P-45 (Map keying photos in exhibit P-44 to location in the PAA.)

¹¹³ At the time of trial, Lauderdale County did not have a zoning ordinance, building code, plumbing code, electrical code, mechanical code, gas code, fire code, housing code, sewer ordinance and other health and safety codes in place. See Exhibit P-17.

¹¹⁴ At the time of trial, the City of Meridian had in place the following health, life safety and land use ordinances:

- Comprehensive Plan
- Zoning Ordinance
- Sign Ordinance
- Floodplain Ordinance
- Subdivision Regulations
- Building Code – 2000 International Building Code

The proof showed that Meridian has the staff in place and proposed to provide these services.¹¹⁵

The City of Meridian has achieved a Class 4 fire rating.¹¹⁶ The PAA is served by several fire protection districts, with a variety of ratings including classes 6, 8 and 9.¹¹⁷ One area of the PAA is not in any fire district and therefore graded as class 10.¹¹⁸ Coincidentally, this class 10 area happens to be home of the Northeast Elementary School. The City of Meridian provides first responder fire protection services to the industrial portions of the PAA. The proximity of the City's fire stations, the availability of its full time firemen and the level of equipment they possess will provide an enhanced level of fire response.¹¹⁹ Further, if annexed by the City of Meridian, the provision of fire protection by a Class 4 fire department will potentially lower the homeowner's insurance premium.¹²⁰ The presence of three public schools in the PAA results in a significant daytime population of the PAA, which is an indicator of the need for

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- Plumbing Code – 2000 International Plumbing Code
 - Electrical Code – 2005 National Electric Code
 - Mechanical Code – 2000 International Mechanical Code
 - Gas Code – 2000 International Fuel Gas Code
 - Fire Code – 2000 International Fire Code
 - Housing Code - 1997 Standard Housing Code
 - Unsafe Building Code – 1985 Standard Unsafe Building Abatement Code
 - Litter Ordinance
 - Sewer Ordinance
 - Unkempt Property Ordinance
- See Exhibit P-17

¹¹⁵ See Exhibit P-2

¹¹⁶ See Exhibit P-17 (City Services versus County Services)

¹¹⁷ See Exhibit P-17.

¹¹⁸ See Exhibit P-37

¹¹⁹ See Exhibit p-37

¹²⁰ See Exhibits P-38, P-39, P-40, P-41 and P-42

municipal services. Meridian has made numerous fire runs into the proposed annexation area. This service has been needed despite the existence of volunteer fire departments.¹²¹

Investigation has shown that the PAA will benefit from enhanced solid waste collection provided by the City through the provision of a higher level of garbage and trash service.¹²²

The application of zoning and urban level planning will allow for more appropriate and better planned land use, and protection of property values. Land use studies in the PAA show mixed incompatible land uses on randomly sited plots of land.¹²³ The application of proper municipal level zoning and subdivision regulations would provide for a more orderly and more efficient delivery of municipal services. Further, the continuation of such land use patterns has the potential to diminish property values and to create blighted conditions therein.

The PAA is in need of sewage collection and treatment. The soils are not conducive for septic tanks and no governmental agency has provided this needed service, except for limited areas served by Meridian or Marion. A portion of the north PAA is served by Briarwood Waste Control and Trust Developers, Inc.; however, more extensive sewer service is needed.¹²⁴ The result of inadequate sewer service has been the creation of existing and potential health hazards to the residents of the PAA and the City of Meridian.

¹²¹ See Exhibits P-35 and P-36

¹²² See Exhibit P-17

¹²³ See Exhibit P-47 (Existing Land Use Map (2005) PAA), Exhibit 56 (Photos re Need for Planning and Zoning) and P-55 (Map keying Photos to specific location in the PAA)

¹²⁴ See Exhibit P-72 (Map of Five Year Sanitary Sewer System Improvements Plan) Exhibit P-44 (Photos of Health Hazards (Potential) from Solid Waste and Sewage) Exhibit P-45 (Map keying location of photos)

Substantial population growth has already occurred in the area sought to be annexed. Population is estimated to be 1,790 in the proposed annexation areas. Dwelling units increased from 592 in 2000 to 755 in 2005. Population density increased from 153 persons per square mile in 2000 to 192 persons per square mile in 2005.

The evidence clearly established that numerous fire department runs had been made into the PAA by the City of Meridian's fire department. Annexation will result in an immediate reduction in fire insurance rates for many of the property owners.¹²⁵

Police Chief Benny Dubose 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.¹²⁶ He surveyed the need for traffic law enforcement by having radar checks run in the PAA. In addition officers monitored compliance with stop signs in the PAA.¹²⁷ Observed conditions within the PAA reflect a need for municipal level police protection. Evidence of the discharge of firearms, speeding and other violations of law are prevalent within the PAA.¹²⁸ The City has the expertise, equipment, manpower and legal authority to provide a higher level of service than that currently existing within the area.

The Chief testified that his department could meet the need for municipal police protection in the PAA with the personnel and equipment listed in Exhibit P-2.¹²⁹

There was concern on the part of witnesses that the additional officers proposed to be hired in the City's plan would not serve the citizens of the proposed annexation area.

¹²⁵ It is undisputed that some of the residents are already receiving reduced premiums based on the proximity of the area to the City of Meridian.

¹²⁶ Exhibits P-63, P-64, P-65, P-52, P-53 and P-54

¹²⁷ P-53, P-54

¹²⁸ See Exhibit P-53 (Summary of Violations of Posted Speed Limits and Traffic Control Devices), Exhibit 54 (Photos) Exhibit 52 (Map keying photo and traffic violation locations)

¹²⁹ Without knowing more than the reputation of Sheriff Sollie, Dr. Martin expressed the view that he was satisfied with the police protection in the area. T-1070

This was mere conjecture. The City of Meridian offered testimony through Chief Dubose that the beat structure would be revised to make certain that the proposed annexation area received municipal level police protection.¹³⁰

Residents within the proposed annexation area contend that they have all the services they need. This is not born out by the evidence. This factor weighs in favor of the proposed annexation

7. Natural Barriers

The Chancellor found:¹³¹

Natural Barriers. The next indicia of reasonableness required to be considered is whether or not there are natural barriers that would in any way be detrimental to the annexation.

The Court finds that the evidence shows that there are no natural barriers to indicate the unreasonableness of this proposed annexation.

The evidence revealed no natural barriers to indicate the unreasonableness of this proposed annexation.¹³² The lack of barriers, man-made, natural or geopolitical indicates the reasonableness of the proposed annexation. The briefs of the Appellants do not challenge the Special Chancellor' decision on this point other than to argue that Marion is a barrier to Meridian's annexation. The claim that Marion bars direct access from the City of Meridian to the Parcel One is simply not borne out by the evidence. Parcel One is connected to Meridian by Highway 39. None of the concerns this Court has previously raised with regard to natural barriers exist here.

¹³⁰ See Exhibit p-64

¹³¹ RE 429

¹³² Mr. Gouras admitted that there were not natural barriers. He testified:

Q. Are there any natural barriers between the city and the proposed annexation area?

A. Not to my knowledge, no. T-1335

8. Past Performance

The Chancellor found:¹³³

Past Performance. The next indicial of reasonableness is past performance of the City of Meridian in providing services to the residents and landowners of the existing City. Testimony of Mayor Smith, Monty Jackson, Public Works Director, and Michael Bridge show the high level of services the City of Meridian has provided to the areas last annexed. While no City is ever perfect, the record supports Meridian's claim of good past performance within the existing City. The record shows that Meridian provides municipal level trash and garbage collection, street lighting, parks and recreation services, water, sanitary sewer, streets and street maintenance, drainages, right of way maintenance, animal control, police protection and fire protection within the existing City. In addition Meridian has adopted and implemented zoning ordinances, subdivision regulations, building and construction codes and life safety codes to its existing citizens. Exhibit P17, 78 ,89.

This indicia weighs in favor of annexation.

The record contains substantial evidence in support of this finding. The past performance of the City of Meridian in providing services to the residents and landowners of the existing city indicates the reasonableness of the proposed annexation. Mayor Smith, Monty Jackson, Public Works Director and Michael Bridge detailed the high level of services the City of Meridian provided to the areas last annexed. While no city is ever perfect, the record supports Meridian's claim of good past performance within the existing City. The record shows that Meridian provides municipal level trash and garbage collection, street lighting, parks and recreational services, water, sanitary sewer, streets and street maintenance, drainage, right of way maintenance, animal control, police protection and fire protection within the existing city. In addition Meridian has adopted and implemented zoning ordinances, subdivision regulations, building and construction codes and life safety codes to its existing citizens.

¹³³ RE 429

The Appellants simply focus on portions of the evidence. The Chancellor cannot be said to be manifestly wrong in his finding. This indicia weighs in favor of annexation.

9. Impact on Residents and Property Owners

The Chancellor found:¹³⁴

Impact on Residents and Property Owners. The next indicia of reasonableness is the impact on residents and property owners. The evidence reveals that the residents and property owners in the PAA will receive valuable services in return for the additional taxes they will pay. These service and accruing benefits are lengthy but they include:

- enhanced ordinances including zoning, life, safety and building codes;
- enhanced police and fire protection;
- reduced fire rating;
- potential reduction in home owners insurance premiums;
- sewage collection and treatment;
- street lights;
- enhanced traffic control and signage;
- enhanced pest control;
- enhanced water supply and distribution; enhanced garbage and trash collection service;
- reduction of county taxes through the elimination of special levies for fire protection and' garbage collection; and
- enhanced street construction and maintenance,

The citizens and property owners will receive substantial value for the additional costs, which would be associated with being annexed by the City of Meridian.

These factors favor the reasonableness of the proposed annexation.

In 1985 the Mississippi Supreme Court stated¹³⁵:

We have attempted to establish criteria¹³⁶ by which chancellors may gauge the reasonableness of an annexation. *Dodd v. City of Jackson*, 238 Miss.

¹³⁴ RE 430-431

¹³⁵ *Western Line Consol. School Dist. v. City of Greenville* 465 So.2d 1057, 1060, (Miss. 1985)

¹³⁶ "Criteria" became "indicia" in *Basset v. Taylorsville*, 542 So.2d 918 (Miss. 1989) and the cases that followed.

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 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,¹³⁷ 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.

The evidence supports the Chancellor's finding that the residents and property owners in the proposed annexation will receive valuable services in return for the additional taxes they will pay.

The impact on the residents and property owners of the proposed annexation area indicates the reasonableness of annexation by the City of Meridian. The residents and property owners of the PAA will receive good and valuable municipal services for the tax dollars paid should the annexation be approved. The listing of such services and accruing benefits is lengthy and includes.¹³⁸

¹³⁷ *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1172 (Miss. 1994)

¹³⁸ Testimony of Mayor Smith, Michael Bridge, Various Departmental witness

- enhanced City, compared to County services;¹³⁹
- enhanced ordinances including zoning, life safety and building codes;¹⁴⁰
- enhanced police and fire protection;¹⁴¹
- reduced fire rating¹⁴²
- potential reduction in home owners insurance premiums;¹⁴³
- sewage collection and treatment;¹⁴⁴
- street lights;¹⁴⁵
- enhanced traffic control and signage;
- enhanced pest control;
- enhanced water supply and distribution;¹⁴⁶
- enhanced garbage and trash collection service; and
- reduction of county taxes through the elimination of special levies for fire protection and garbage collection
- enhanced street construction and maintenance¹⁴⁷

The City of Meridian delivers a high level of services to its residents and property owners. The citizens and property owners will receive substantial value for the additional costs, which would be associated with being annexed by the City of Meridian.

Water and sewer will be extended into unserved areas.¹⁴⁸ Overall the tax impact on residents of this proposed annexation area would be quite low.¹⁴⁹ In view of the

¹³⁹ See Exhibit P-17

¹⁴⁰ See Testimony of Jimmy Gouras testifying for the objectors. On direct testimony Mr. Gouras stated: "Yes sir, there is a need for planning in the annexation area. There is no doubt. And I couldn't sit in front of you, your Honor, and say otherwise." T-1320

Later he testified "I do recognize the need for overall planning in the area" T-1319

"I couldn't sit in front of you with a straight fact and say that there is not a need for building codes and that area would not benefit from building codes" T-1320

¹⁴¹ See Exhibits P-52, P-53, P-54, P-35, P-36, P-37, P-90

¹⁴² See Testimony of Jimmy Gouras "Well, I don't think there is any question that a Class 4 fire department would be a benefit." T-1332

¹⁴³ Exhibits P-38, P-39, P-40, P-41, P-42

¹⁴⁴ Exhibits P-72, P-44, P-45, P-2

¹⁴⁵ Exhibit P-76, P-2

¹⁴⁶ Exhibit P-86, P-2

¹⁴⁷ Exhibits P-50, P-51, P-2

¹⁴⁸ See Exhibits 72, 86.

¹⁴⁹ See Exhibits P-26, P-27, P-28

increased level of services and the modest tax impact, this factor strongly supports the reasonableness of the proposed annexation.

One resident, Mr. Herrington, expressed his concerns for the impact on his life style as follows:

Q. Before you got on the witness stand you told me something about the house where you live and why you like to live there?

A. Yes, sir. Yes, sir, I enjoy living there. My house sits on top of a hill. And of course there is the - - the lower part of the subdivision does have street lights. But at night I can sit on my back porch, I can see the stars, and there is not lights around to block that out.

I hear Whippoorwills, owls. I have raccoons that come up in my backyard. And I don't - the nine year I lived in the City of Meridian, I did not experience anything like that.¹⁵⁰

...
Q. Have you any reason to believe that Meridian would chase the whippoorwills or raccoons away?

A. Probably. I would think so. Since there were no raccoons or whippoorwills in the city when I lived there, I assume they will run then all off when they get there. Transcript of November 14, 2005, Page 89.

Whether the witness is serious or not, a point is demonstrated. City limits signs do not have such an impact. The impact he fears is the growth which is presently occurring. The objectors repeated the common mantra in annexation cases. That is that they just wanted to maintain their rural life style. That is changing and will change whether the area is annexed or not. The growth the Court observed in the area make it clear that the days of a rural life style are numbered with or without annexation. The only difference will be whether the growth occurs in an orderly and planned manner in the City or a haphazard manner in unincorporated Lauderdale County.

This factor favors the reasonableness of the proposed annexation.

¹⁵⁰ See T-1109.

**10. Impact of the Annexation upon the Voting Strength of
Protected Minority Groups**

The Chancellor found:¹⁵¹

Impact of Voting Strength of Protect Minorities. The next annexation indicia of reasonableness is the impact of upon the voting strength of protected minority groups.

The population of Meridian was 44.0% white, 54.4% African American and 1.6% other in 2000. The voting age population of the City of Meridian is 50.2% white, 48.2% African American and 1.5% other according to the 2000 census. The area sought to be annexed is 84.4% white, 13.9% African American and 1.7% other. The resulting City of Meridian would, upon approval of the proposed annexation, be 45.4 % White, 53.0% African American and 1.6% other. Exhibit P21. This diminution of the protected minority is not necessarily impermissible. See *City of Richmond, Virginia v. U.S.* 422 U.S. 358, 95 S.Ct. 2296 (U.S. Dist. Col. 1975).

So long as the City of Meridian has established that the purpose of this annexation is not discriminatory, that there are now objectively verifiably legitimate reasons for the annexation and that there are wards that can be used to preserve voting strength of the protective minorities then the annexation is permissible. The City of Meridian has established the non-discriminatory purposes of this annexation and therefore annexation is reasonable under this indicia.

The evidence established that the City of Meridian configured the proposed annexation so that no potential minority voters that were within any path of growth were excluded.

The proposed annexation will not impermissibly dilute the voting strength of any protected minority. The population of Meridian was 44.0% white, 54.4% African American and 1.6% other in 2000. The voting age population of the City of Meridian is 50.2% white, 48.2% African American and 1.5% other according to the 2000 census.¹⁵² The area sought to be annexed is 84.4% white, 13.9% African American and 1.7% other.

¹⁵¹ RE 431-432

¹⁵² See Exhibit P-21 (Demographic Data Sheet)

The resulting City of Meridian would, upon approval of the proposed annexation, be 45.4 % White, 53.0% African American and 1.6% other.¹⁵³

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%; 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

¹⁵³ See Exhibit P-21 (Demographic Data Sheet)

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).

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 Meridian clearly established the non-discriminatory purposes of the annexation.

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. This is true even

when the voting strength of a protected minority has been diminished. Most recently the Court stated:

Although the objectors argue that the PAA is predominately white and this would negatively affect the voting strength of minority voters, they offered no proof in support of their argument. Hattiesburg offered exhibits which showed that the non-white racial composition of the citizenry within the existing city limits was 41.8 percent, contrasted with a 41.6 percent non-white racial composition within the enlarged territory. The white population would rise by .2 percent from 58.2 percent to 58.4 percent. The white voting age population would increase .1 percent to 64.4 percent with the annexation, while non-white voting age population would decrease by .1 percent to 35.6 percent.

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*, 840 So. 2d 69 (Miss. 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%).

This factor favors the proposed annexation.

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

The Chancellor found:¹⁵⁴

Fair Share. The next indicia is whether the property owners and other inhabitants of the area sought to be annexation 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

¹⁵⁴ RE 432-433

and social) benefits of proximity to the municipality without paying their fair share of the taxes.

This indicia places upon the Court the task of making a subjective evaluation of what is considered a fair share of the taxes. The Court is of the opinion that so long as the property owners and other inhabitants of the area pay taxes imposed upon them by the authorities that the payment of those taxes would be considered their fair share. The Court does recognize, however, that the property owners and residents in the area sought to be annexed are located in the area because of their proximity to the City of Meridian. They shop in Meridian, they go to church in Meridian, they buy their clothes in Meridian, and they eat their lunches in Meridian. Without the City of Meridian, it is doubtful that the majority of the residents would be living where they are now. The Court therefore finds that this indicia is reasonable.

With regard to this indicia the Mississippi Supreme Court made the following observation in *Columbus*:¹⁵⁵

The lower court made no finding on this indicium. The value of this item as an indicator of reasonableness is questionable because it is difficult to envision a situation where an individual's "fair" share of taxes is greater than the amount required by law. Residents of the PAA pay required county taxes as well as sales taxes when they buy goods in Columbus. Fairness requires no more.

Clearly, Meridian is the economic hub of Lauderdale County. Substantial growth has occurred in the proposed annexation area surrounding the City. Many residents and businesses are there because of the proximity of Meridian. As a general rule¹⁵⁶ the language of the Mississippi Supreme Court in *Basset v. Taylorsville* is applicable to the situation here:

The smoke screens removed, these Appellants simply do not want to pay town taxes. They claim that there is nothing Taylorsville can do for them and that they will achieve no benefits from annexation. Each would have

¹⁵⁵ *Matter of Extension of Boundaries of City of Columbus*, 644 So.2d 1168, 1180 (Miss. 1994)

¹⁵⁶ We recognize that other reasons were advanced such as Dr. Martin's testimony about residents wanting to be able to target practice in the back yard. See T-1064. While the inability to do so may impact those children, the Court must take notice of the level of development in the area. The tongue in cheek question about being able to shoot golf and golfers, on reflection may not be so tongue in cheek after all.

us ignore the benefits. Taylorsville's proximity has long afforded them benefits each will continue to enjoy without regard to annexation. Each draws employees from Taylorsville, and otherwise participates in the life of the community. If the town of Taylorsville became unincorporated tomorrow and all of its residents moved away the next day, Enamel Plating and Bassett would be out of business. It is not unreasonable to suggest that what these objectors want is representation without taxation. This is hardly the stuff of which good citizens are made. *Bassett v. Town of Taylorsville*, 542 So.2d 918, 922 (Miss. 1989)

The residents and landowners may pay the taxes required by their benefit from proximity to the City of Meridian without paying municipal taxes. The area's major employment base is within the City of Meridian. Meridian provides a primary population base to support the commercial activities being developed in the proposed annexation area. Meridian provides the sewer treatment facilities, and fire protection to portions of the area sought to be annexed. The residents and property owners within the PAA do benefit from their proximity to the City of Meridian. The City does respond to fire emergencies within the PAA. Some property owners do benefit from the Class 6 and Class 8 ratings of Meridian's fire protection districts without paying any taxes to the city for the provision of first response fire protection from the city. Residents within the area sought to be annexed avail themselves of recreation facilities and programs offered by the City. These same residents regularly use City streets, shop within the City, and all are protected by the fire and police departments and use many City services while in the City.¹⁵⁷

¹⁵⁷ As is typical in annexation cases, the objectors presented testimony that they were satisfied with the services they already received. However, it is clear from the record that little investigation had been conducted to support this claim of adequate services. A prime example is contained in the testimony of Dr. Martin. He testified:

Q. And sir, you've testified that you were satisfied with your fire protection, did you not?

A. That is correct.

12. Other Factors

The Chancellor found:¹⁵⁸

-
- Q. And to reach your level of satisfaction, I take it you didn't make any investigation as to what the real situation was with regard to fire protection?
- A. I'm not sure I understand your question. But I knew for a fact there was a fire station sitting at the corner of Van Zyverden Road and Briarwood Road.
- Q. When we drove by that fire station the other day, I noticed that all three doors were closed?
- A. That is correct.
- Q. Do you know if that station is manned?
- A. I can answer your question that the three doors were closed. **I cannot answer whether it's manned or not.** There was a pickup parked beside it.
- Q. So, in your investigation to determine that you were satisfied with your fire protection, tell us hat you did to reach that conclusion, what evidence you made up your own mind of being satisfied with the fire protection, in your mind?
- A. The only objective evidence, other than the fact that the fire station is as I described it, is the confidence in the developer that platted the subdivision and responsible for putting the infrastructure in place. There was -- at the time we purchased our lot there was no water flowing in the subdivision.
- Q. Do you know how many volunteer fire fighters are engaged at that fire station near your house?
- A. No, sir, I do not.
- Q. Do you know what kind of equipment they've got?
- A. No, sir, I don't.
- Q. Do you know what kind of water pressure they're going to have when they get to your house?
- A. I cannot tell you.
- Q. Do you know what kind of training those fire fighters have?
- A. I can tell you only in a general sense that they have been put through a course of training, both for fire fighting and homeland security, most recently.
- Q. And sir, with that limited information you're satisfied with the fire protection you have are you not?
- A. Yes, sir T - 1067-1069

Dr. Martin demonstrated satisfaction for a number of other services with a similar level of information as to adequacy, i.e. Police Protection at pages T- 1070

¹⁵⁸RE 433

Other Factors. The last indicia of reasonableness is any other factor that may be suggested or may suggest reasonableness or not. The Court after having considered the previously eleven indicia of reasonableness and having found that they all indicate that the annexation of the proposed annexation areas is reasonable with the exception of a small portion of the third annexation area which will be discussed later. There are no other factors that the Court can find that might suggest reasonableness.

Other factors which indicate the reasonableness of this proposed annexation are the City of Meridian's position as a regional trade and employment center for east central Mississippi and portions of western Alabama.¹⁵⁹ The City of Meridian is called on to provide municipal level services to accommodate its role as such both within and outside its present municipal boundaries. Many of the residents in the proposed annexation area have located there because of the opportunities provided by the City of Meridian.

VI. CONCLUSIONS

The evidence when considered using the indicia individually suggests the reasonableness of this proposed annexation. On the other hand the position of the objectors was summed up by the testimony of their spokesman, Dr. Martin.¹⁶⁰ He testified:¹⁶¹

Q. In reality, there is nothing I can tell you that's going to remove your opposition to the annexation, is there?

A. No, sir.

¹⁵⁹ Throughout the course of this trial there was a lot of concern expressed by the impact of this annexation on the Town of Marion. While Marion has no annexation under consideration, the Court notes that there is a substantial difference between the importance to a region of a viable Marion and a viable Meridian. Meridian is clearly the economic hub of the region. Marion on the other hand is little more than a bedroom community. During the cross examination of Mr. Gouras it came out that of the approximately 1000 residents of Marion 461 persons are employed. Of those only 30 actually work in the town of Marion. See Transcript 1401, 1402..

¹⁶⁰ Though Dr. Martin was the spokesman for the Citizens Against Annexation, his testimony revealed that he was selling his house in the proposed annexation area and moving back into the City of Meridian. Transcript of November 14, 2005, Page 47, Lines 11-22

¹⁶¹ This testimony came immediately after Dr. Martin was informed that one of the basis for his opposition was incorrect. See Transcript of November 14, 2005, pages 48-49.

Q. And regardless of the facts I may present you with; you're going to be opposed to his annexation, aren't you?


A. Yes, sir.

It is obvious that the facts related to reasonableness would not influence the desires of the parties in this case. We submit the annexation as modified by the Chancellor is reasonable and should be affirmed.

Respectfully submitted this the 7th day of November, 2007.

CITY OF MERIDIAN, MISSISSIPPI
Appellee

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CERTIFICATE OF SERVICE

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

Honorable Jason H. Floyd, Jr.
Special Chancellor
204 Tate Street
Senatobia, MS 38668

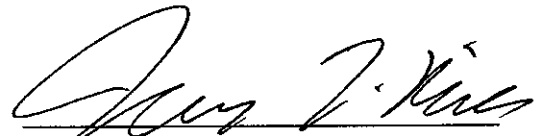
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Dated this the 7th day of November, 2007.


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