

**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;
LAUDERDALE COUNTY, MISSISSIPPI;
CITIZENS AGAINST ANNEXATION; and
EAGLE POINTE HOMEOWNER'S
ASSOCIATION, INC.**

APPELLANTS

v.

CITY OF MERIDIAN, MISSISSIPPI

APPELLEES

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

ORAL ARGUMENT REQUESTED

APPELLANTS' REPLY BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument will provide this Court with an opportunity to question the attorneys regarding the issues which tower over this appeal like colossi: how can a court allow an annexation by a city to stand when that city has suffered steady population decline for over forty years, is offering little, if any, benefits to citizens in the area being annexed, and has a miserable record of past performance. Oral argument will also give Appellants an opportunity to explain the significance of the exhibits and the testimony. This is particularly important given the fact that this Court is being asked to reverse and render the Chancellor's determination that annexation by the City of Meridian is reasonable.

I. INTRODUCTION

Instead of replying to each and every assertion made in the brief filed by the City of Meridian, Appellants in rebuttal wish to invite the Court's attention to three particularly troubling areas of Meridian's annexation attempt. First, despite the City's best effort, it cannot demonstrate that annexation by a City whose population has decreased dramatically for **over four decades, despite the addition of vast amounts of land**, is in any way reasonable. Second, Meridian cannot demonstrate that citizens of the PAA will receive sufficient value in return for their tax dollars. Third, an examination of Meridian's past performance record reveals that the City is not prepared to provide promised services to annexed residents.

Appellants realize that this Court has held that the indicia of reasonableness are not independent tests and that the reasonableness of an annexation must be considered under the totality of the circumstances. However, as detailed *infra*, this Court has sensibly given the three factors discussed a heightened level of significance for very good reasons. It is almost impossible for a city to cross the threshold indicium of need to expand when it has a long history of population decline. It becomes even more difficult to justify annexation when the citizens on the receiving end are not offered wanted or needed municipal services in exchange for the increased tax burden placed on them. When a poor record of past performance is added for good measure, Appellants submit that the annexation must fail. This Court should reverse and render the Chancellor's decision.

II. ARGUMENT IN REPLY

A. An Annexation Attempt by a City that Has Experienced Declining Population for Decades, Despite Adding Vast Amounts of Territory to its Limits, Cannot Be Reasonable.

The City of Meridian concedes in its brief that its population is in decline. M.B. 12.¹ The City understandably avoids discussing the details of its long-term population decline by attempting to deflect attention to irrelevant household population averages, demographic changes, and building conversions. *Id.* at 12-13. However, as Appellants' principal briefs pointed out, Meridian's population has been shrinking for decades, despite numerous annexations. The importance of this undisputed evidence cannot be glossed over, diminished, or ignored. The City is in a state of lengthy, historical population decline, and cannot annex fast enough to capture sufficient population to reverse the decline.

This Court has given a heightened level of significance to a municipality's population growth (or lack thereof) in the context of an annexation attempt. In *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson* ("City of Jackson"), 691 So. 2d 978, 981 (Miss. 1997), this Court stated: "[w]hile 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 factors should, at the very least, be an impediment to annexation." Furthermore, in *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson* (City of Jackson II), 912 So. 2d 961, 963 (Miss. 2005) (en banc), this Court noted Jackson's history of decline in the first paragraph of its opinion. Finally, in *In the Matter of the Extension of the Boundaries of the City of Winona* ("City of Winona"), 879 So. 2d 966, 992-93 (Miss. 2004) (Dickinson,

¹ References to the brief filed by the City of Meridian will be cited as M.B. 1, M.B. 2, etc. Portions of the record containing trial exhibits will be cited as R. 1, R. 2, etc. The court reporter's transcript will be cited as Tr. 1, Tr. 2, etc.

dissenting), Justice Dickinson spoke quite harshly of the approval of an annexation despite the annexing municipality's long-term population decline, stating that "it seems . . . quite odd that the majority affirms, over objection, an annexation by a city which (despite two annexations in the past 10 years) cannot contradict" that its population decreased from 1980 to 1990, and decreased from 1990 to 2000. Justice Dickinson also recognized that without growth, there can be no path of growth. *City of Winona*, 879 So. 2d at 994. Here, the Court is faced not with merely two decades of population loss, but four. At some benchmark Justice Dickinson's analysis in *City of Winona* can no longer be ignored. Appellants respectfully submit that that point has been reached in the case now before this Court.

While the Appellants set forth the details of Meridian's decline in their principal briefs, these details are worth repeating here. In 1960, Meridian's population totaled 49,374. R. 1235, 1541. By 2000, the City's population decreased by nearly 10,000 to 39,968.² *Id.* According to ESRI Census estimates, the City's population had decreased to 38,492 by 2004, and will fall to 37,647 by 2009. R. 1542. This dramatic decrease occurred during a period in which Meridian nearly doubled its geographic size, annexing territory 5 times from 1960 to 2004. R. 11 (map), 1240.

In *City of Jackson*, 691 So. 2d at 981, this Court spoke in terms of a lack of *significant population growth*, and held that such a lack of growth is an impediment to annexation. As the above-cited numbers show, Meridian has not only failed to sustain significant population growth, it has experienced *significant population decline* since the Eisenhower Administration. Appellants respectfully submit that annexation by Meridian cannot as a matter of law be reasonable at this time. A city that is shrinking and is projected to continue shrinking simply cannot realistically demonstrate that it needs additional territory.

² From 1960 to 2000, Meridian's population decreased by nearly 20%. R. 1236.

Meridian attempts to downplay the importance of its long-term population loss by citing a number of decisions from this Court which it asserts affirmed the approval of municipal annexations despite continuing population decline. M.B. 10-11 n. 26. The earliest case cited by Meridian in support of its claim that long-term population decline is not fatal to an annexation attempt is *Town of Crystal Springs v. Moreton*, 95 So. 242 (Miss. 1923). However, the clear language of this Court in *Crystal Springs* does not support the proposition for which the case is cited. There this Court stated:

The proof shows that between 1910 and 1920 there was but little growth in the [T]own of Crystal Springs proper, and that the population actually declined in the early part of that period. But it shows that at the time of the proposed extension the town was building rapidly.

Town of Crystal Springs, 95 So. at 243.

Notably absent from the Court's commentary on Crystal Springs' population is any mention of sustained population decrease. The annexation ordinance in that case was passed in 1921,³ and the Court mentioned only a decrease in population early in the period from 1910 to 1920. *Id.* at 242-43. However, at the time of the annexation, Crystal Springs was actually growing. *Id.* at 243. Thus, Meridian's reliance on *Crystal Springs* is misplaced.

Meridian also cites *Prestridge v. City of Petal*, 841 So. 2d 1048 (Miss. 2003), as a case in which this Court affirmed an annexation attempt despite the annexing municipality's continuing decline in population. The clear language of this Court in that case reveals that the annexing municipality was not in the midst of long-term population decline at the time of the annexation. *Prestridge*, 841 So. 2d at 1052. In fact, the Court stated that while Petal's population fell

³ Residents living in the annexed area actually voted in favor of being annexed, *Id.* at 242, further distinguishing *Town of Crystal Springs* from the case at hand, where no one from the PAA voted for or testified in favor of annexation, or even spoke in favor of being annexed.

between 1980 and 1990, the city's population increased from 7,883 in 1990 to an estimated 9,175 in the year 2000. *Id.*⁴ Meridian's reliance on *Prestridge* is also misplaced.

City of Winona, 879 So. 2d 966, is cited by Meridian as well. However, that case is also distinguishable from the instant case. There, although Winona's population was in decline, the city's urban planning expert "stated that there was a slight decrease in the City's population from 1980 to 2000." *City of Winona*, 879 So. 2d at 976. Such a slight decrease in population over a twenty year period cannot compare to the decrease of approximately 10,000 that Meridian has experienced over the last forty-plus years. Thus, Meridian's reliance on *City of Winona* is misplaced.

Finally, Meridian cites *City of Jackson II*, 912 So. 2d 961, in support of its contention that long-term population decline is not fatal to an annexation attempt. While the City of Jackson's population has no doubt decreased, Jackson's population decline does not begin to rival that experienced by Meridian. U.S. Census Bureau information reveals that while Jackson's population did in fact decrease from 1980 to 1990 and from 1990 to 2000, Jackson experienced significant population increases from 1960 to 1970 and from 1970 to 1980.⁵ Jackson's 2000 population was larger than its 1960 population by nearly 40,000. See footnote 3. Given the fact that Jackson's population increased by nearly 40,000 from 1960 to 2000, while Meridian's population decreased by nearly 10,000 over the same period of time, *City of Jackson II* is hardly a reliable precedent. Meridian's reliance on *City of Jackson II* is misplaced as well.

⁴ The city passed its annexation ordinance in 1998. *Id.* at 1050.

⁵ In 2000, Jackson's population was 184,256. See <http://factfinder.census.gov> (last visited December 20, 2007). In 1990, Jackson's population was 196,637. See <http://www.census.gov/population/documentation/twps0027/tab22.txt> (last visited December 20, 2007). In 1980, Jackson's population was 202,895. See <http://www.census.gov/population/documentation/twps0027/tab21.txt> (last visited December 20, 2007). In 1970, Jackson's population was 153,968. See <http://www.census.gov/population/documentation/twps0027/tab20.txt> (last visited December 20, 2007). In 1960, Jackson's population was 144,422. <http://www.census.gov/population/documentation/twps0027/tab19.txt> (last visited December 20, 2007).

As the Court can plainly see, despite Meridian's attempts to discount its long-term population decrease, it cannot point this Court to a single annexation in the history of this State in which a city that experienced such a significant population decline for over four decades has successfully annexed additional territory. The reason is simple: a city in such decline cannot demonstrate that the annexation of additional territory is reasonable; thus, there can be no substantial and credible evidence in support of a finding of reasonableness. This fact alone demonstrates that the Chancellor committed manifest error by approving the annexation of any additional territory into the city limits of Meridian.

B. The "Benefits" Allegedly Offered to PAA Residents by Meridian Are Speculative and Unneeded. Therefore, Meridian Has Failed to Demonstrate that PAA Residents Will Receive Sufficient Value in Return for their Tax Dollars.

This Court has held on numerous occasions that in order for an annexation to be reasonable, the annexing municipality must demonstrate that residents of the proposed annexation area will receive sufficient benefit in return for their tax dollars. *See City of Jackson*, 691 So. 2d at 981; *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Madison* ("City of Madison"), 650 So. 2d 490, 506 (Miss. 1995); *In the Matter of the Extension of the Boundaries of the City of Columbus* ("City of Columbus"), 644 So. 2d 1168, 1172 (Miss. 1994). In fact, in *City of Madison*, 650 So. 2d at 506, this Court held that even if all twelve indicia of reasonableness weigh in favor of annexation, the annexing municipality must still provide sufficient evidence that annexed residents will receive value for their tax dollars in order for an annexation to be reasonable.

Meridian claims that "residents and property owners of the PAA will receive good and valuable municipal services for the tax dollars paid should the annexation be approved." M.B. 43. The list of the "good and valuable" services supposedly received by PAA residents are

- **Enhanced** City, compared to County services;
- **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.

Id at 44. It is quite interesting that of the thirteen “good and valuable services” that Meridian asserts will benefit PAA residents, nine are by Meridian’s own admission either “enhanced” or “potential,” while the record reveals that the remaining four “good and valuable services” provide little to no real benefit at all.⁶

This Court has been faced with similar circumstances in the past. In *City of Columbus*, 644 So. 2d at 1178, this Court stated the following

The City, in its brief calls the Court’s attention to the ample testimony in the record that tends to establish that police protection, fire protection, mosquito control, and garbage service would be better after annexation.

While it is impossible to conclude that the lower court was manifestly in error on this point, it is equally difficult, based on the evidence in the record, to see how this indicator [need for municipal services] has any relevance for determining the reasonableness of the limited annexation. The “need” for increased services of these types is at best very subjective. To simply state that such services will be more available begs the question as to whether such incremental increases are actually needed. Many of the hundreds of objectors in this case testified that as individuals they recognize no need for “improvement” with respect to these specific services. Likewise, the City produced some residents of the PAA that supported annexation precisely because they perceived a need for greater municipal services. While a general referendum would suffice, there is no manageable *judicial* method for determining the subjective needs of a diverse group of citizens. Accordingly, at least in this case where the PAA is not totally lacking such services, this factor deserves very little consideration.

⁶ The chancellor cited eleven “service[s] and accruing benefits” that will be provided by Meridian (omitting “enhanced City, compared to County services” and “enhanced garbage and trash collection service” from the above-cited list), seven of which are either “enhanced” or “potential.” M.B. 42.

Furthermore, in *Poole v. City of Pearl*, 908 So. 2d 728, 740 (Miss. 2005), this Court stated: “when current services are adequate, the fact that annexation may enhance municipal services should not be given much relevance, especially as here, where the evidence of the likelihood of enhanced service is greatly conflicting.” Thus, this Court has clearly recognized that alleged “enhanced” services provided by a city are for all intents and purposes a nullity and should be ignored.

In order to appreciate the truly speculative nature of the alleged “benefits” provided by Meridian, it is necessary to evaluate each “good and valuable service” listed by Meridian. First, Meridian asserts that it provides “enhanced City, compared to County services.” M.B. 44. This necessarily raises the question whether the proposed City services will actually provide benefits to PAA residents over and above the services they are currently provided. The following review of the services listed by Meridian reveals that they will not:

The City first states that it will provide “enhanced ordinances including zoning, life safety and building codes.” While Appellants acknowledge that some areas of the PAA are not covered by building codes, it is noteworthy that construction in a large portion of Parcel 1 is controlled by the Southern Building Code and restrictive covenants, and is subject to inspection. Tr. 1095, 1098, 1111. In these areas, no additional ordinances/codes are needed.

The City also alleges that it will provide “enhanced police and fire protection.” Numerous PAA residents testified that they are satisfied with the existing level of police protection within the PAA. Tr. 1052, 1100. The Sheriff of Lauderdale County testified that crime within the PAA is low and there is no need for increased police protection in the area. Tr. 1187, 1189, 1190-93. More importantly, the Sheriff stated that due to the overload of calls currently received by the Meridian Police Department, efforts to patrol the PAA would not

increase if the annexation is approved. Tr. 1202. Who knows the law enforcement needs of Lauderdale County better than its chief law enforcement official?

The record also indisputably shows that PAA residents are satisfied with the fire protection currently provided. Numerous residents of Eagle Pointe, located in Parcel 1, testified that the fire station located in close proximity to their homes is adequate and has responded in a timely fashion to fire alarms in the area. Tr. 1049, 1101. In addition, Ms. Sadie Martin, a resident of Parcel 3, testified that she is satisfied with the service provided by the volunteer fire department in her area. Tr. 1236-37. The City attempts to diminish the impact of such testimony by arguing that PAA residents have conducted "little investigation" to support their claims of adequate services. M.B. 51-52, n. 157. This argument serves as a prime example of the City of Meridian's belief that it knows what City residents and PAA residents need more than the residents themselves do.

Finally, the record shows that the City's plan to provide "enhanced" fire protection to residents in the PAA would actually decrease the level of protection provided. The City's plan calls for the elimination of an existing fire station near numerous residents in the Eagle Pointe area. R. 22, Tr. 1331. So, residents of this area would actually be worse off from a fire protection standpoint following annexation. R. 928 (map), Tr. 1331. In addition, the City's plan does not call for the hiring of a single new fireman. R. 22, Tr. 1331. How a plan that calls for numerous PAA residents to suffer a decrease in fire protection and for the elimination of a fire station, but does not call for the addition of any personnel serves as an "enhancement" of fire protection completely escapes the Appellants.

For its part, the City offered the testimony of its mayor, fire chief, police chief, and paid expert in support of its contention that PAA residents will benefit from "enhanced police and fire protection." Notably, not a single disinterested resident of the City or the PAA believes that City

police and fire protection will provide PAA residents with protection over and above what they already have. On the other hand, as stated *supra*, the Lauderdale County Sheriff (who has no stake in this matter) testified that no additional police protection is needed in the PAA, while the record indisputably shows that the City's fire protection plan will diminish the fire protection provided to PAA residents. The inescapable conclusion is that the City's "enhanced police and fire protection" is unwanted, unneeded and will not benefit PAA residents.

The next two items on the list of "services and accruing benefits" allegedly offered by the City are a "reduced fire rating" and a "potential reduction in home owners insurance premiums." These two items cannot be considered in isolation. While the City of Meridian no doubt has a lower fire rating than areas within the PAA, the only real benefit that can flow from such a rating is lower home insurance premiums, as the record shows the City's fire protection plan provides reduced benefits, not additional ones. Even this "benefit" is by Meridian's admission not guaranteed. Obviously, if decreased premiums are only "potential", no concrete benefit is provided to PAA residents as a result of Meridian's lower fire rating. Thus, once again, "the reduced fire rating" and "potential reduction in home owners insurance premiums" cited by Meridian do not benefit PAA residents.

Next, the City cites "sewage collection and treatment" as a "good and valuable" benefit that will be provided to PAA residents. Presumably, this is cited as a beneficial service because of Meridian's contention that septic tanks within the PAA present a substantial health hazard. M.B. 22-24. However, as noted in the Appellants' principal briefs, such hazards are not prevalent within large portions of Parcel 1 such as Eagle Pointe which currently have sewage treatment facilities. Tr. 1314-15. Such health hazards are also not prevalent in the portion of Parcel 1 immediately to the north of Meridian, as this area receives sewer services from the Town of Marion. Tr. 966-67.

While there are areas within the PAA that are not served by municipal level sewage collection and treatment facilities, any health hazards that exist in those areas have been insufficient to warrant any action by the state health department. Tr. 526, 1314. In fact, the health department official that testified on behalf of the City revealed that the health department has not received a single complaint from within the PAA concerning health hazards created by septic tanks. Id. Moreover, as detailed at length in the Appellants' principal briefs, the City has experienced numerous significant failures within its sewage system that at one point resulted in 28,500 gallons of raw sewage being spilled in a span of only 5 months. R. 1226-33.

Once again, the record demonstrates that many PAA residents will not gain anything in the way of sewage services upon annexation. This is also evidenced by the fact that no PAA resident has requested sewage services from Meridian. Furthermore, areas that are not currently provided with sewage services have not experienced enough problems with septic tanks to conclude that municipal collection and treatment would benefit them. Finally, Meridian has not demonstrated the ability to solve its own sewage-related problems. The combination of these facts demonstrates that the sewage collection and treatment services offered by Meridian will not benefit PAA residents.

Next, Meridian contends that the installation of street lights is a "good and valuable service" that will be provided to PAA residents. This contention can be disposed of in short order. While street lights may seem like a benefit to Meridian, the view of many PAA residents is summed up by the testimony of Mr. Albert Herrington, a resident of Eagle Pointe, who testified that he enjoys sitting on his back porch at night and being able to look at the stars without street lights blocking them out. Tr. 1109. Undoubtedly, many PAA residents moved away from city lights to enjoy the benefits of a semi-rural area. Street lights are an unwanted

and unneeded addition.⁷ Moreover, portions of the PAA, including a section of Eagle Pointe already have street lights. Tr. 1109.

Meridian lists “enhanced traffic control and signage” as another “good and valuable service” that will be provided to PAA residents. Once again, the evidence revealed that these “good and valuable services” offer no real benefit to PAA residents. With regard to the traffic control issue, the Sheriff of Lauderdale County testified that there is a need for the enforcement of traffic laws in the entire county, not just in the PAA. Tr. 1214. In addition, Meridian’s Chief of Police testified that speeding violations occur within Meridian’s city limits. Tr. 433. If Lauderdale County’s chief law enforcement officer believes there is a traffic control problem in all of Lauderdale County, including Meridian, and Meridian’s Chief of Police acknowledged that speeding violations occur within the City, there is little doubt that the “enhanced traffic control” allegedly offered by Meridian will be of little to no value to PAA residents.

The evidence presented by Meridian with regard to “signage” issues also reveals that PAA residents will not receive anything of value following annexation. First of all, no PAA resident testified that the PAA is in need of additional signage. The Police Chief’s testimony regarding signs within the PAA was limited to his observation of signs containing bullet holes and painted by graffiti. Tr. 389, 392. He did not testify that the PAA needed additional signage or that the signage within the PAA is somehow inadequate. Notably, he could not say that street signs within the City have not been struck by bullets. Tr. 398. He also testified that there are signs within Meridian that have been damaged by graffiti. Tr. 401. Thus, the evidence is clear that annexation by Meridian will not benefit PAA residents by solving any alleged problem with signage in the PAA.

⁷ The Appellants do not contend that street lights are never a needed municipal service. They certainly serve to aid in preventing crime in some areas. However, given the testimony of Mr. Herrington and the fact that crime is not an issue within the PAA, it seems rather pointless to force street lights upon residents who do not want or need them.

The next “good and valuable service” cited by Meridian is “enhanced pest control.” While the City does not state in its brief what particular pest it alleges is creating problems within the PAA, the City’s Public Works Director did testify concerning his department’s mosquito control efforts. Notably, he admitted that Lauderdale County also provides mosquito control services. Tr. 445. In addition, while he testified concerning conditions within the PAA that could create breeding grounds for mosquitoes, he did not identify any mosquito control problem within the PAA. Tr. 445-48. Finally, no PAA resident testified that there is a pest control problem within the PAA. Once again, since the City failed to demonstrate a pest control problem within the PAA, and the County already provides mosquito control services to PAA residents, annexation will not provide any benefit in the way of “enhanced pest control.”

The next “good and valuable service” Meridian claims to offer PAA residents is “enhanced water supply and distribution.” The evidence showed that many PAA residents are within the franchise area of the North Lauderdale Water Association, and that Eagle Pointe residents will not receive water from the City if the annexation is approved. Tr. 1040, 1057. The City did not produce evidence suggesting that the quality of the water currently provided to PAA residents by the Association is inferior to the water provided to Meridian residents or that it is not safe for consumption. Finally, as discussed in Appellants’ principal briefs, Meridian has not received a single request from within the PAA for water service. This evidence demonstrates that, once again, the “enhanced water supply and distribution” allegedly offered by the City to PAA residents fails to provide any benefit at all.⁸

⁸ While the City did present some evidence that annexed residents will receive increased water flow that will aid firefighting efforts, as discussed *supra*, the evidence showed that the City’s fire protection plan would actually decrease the level of fire protection received by numerous PAA residents. In addition, Mr. Herrington testified that the North Lauderdale Water Association installed a booster pump to alleviate any water pressure problems that may have existed in Eagle Pointe. Tr. 1098-99.

The City next lists "enhanced garbage and trash collection service" as a "good and valuable service" offered to PAA residents.⁹ Once again, the testimony revealed that PAA residents already receive adequate garbage and trash collection services from the County and that annexation will not prove beneficial in this area. Dr. Martin testified that in all of North Lauderdale County, County residents have the option of taking their garbage to "green box" collection sites, or they can elect to receive twice a week curbside garbage collection for a fee. Tr. 1054. In addition, Mr. Herrington testified that he is satisfied with the collection services provided by the County. Tr. 1102-03.

The City also lists "reduction of county taxes through the elimination of special levies for fire protection and garbage collection" as a benefit that will accrue to PAA residents upon annexation. The assertion that PAA residents will benefit from reduced taxes after being annexed is laughable. The testimony revealed that PAA residents will actually experience an increase in taxes if annexed. Dr. Martin testified that his taxes will increase by approximately \$1,600 upon annexation. Tr. 1058. The elimination of the special levies referenced by the City would do little to diminish the negative impact of such a large tax increase.

Finally, the City lists "enhanced street construction" as a "good and valuable service" offered to PAA residents. However, not a single PAA resident expressed dissatisfaction with the condition of the streets within the PAA. To the contrary, the only disinterested Meridian resident to testify concerning the state of the streets within the City testified from personal experience that roads in his neighborhood were in a worse condition than the Alaska Highway until they were paved by the County. Tr. 1240-41. The same witness also testified that the shoulders of the roads in his neighborhood are not maintained at all. Tr. 1242. This testimony reveals that

⁹ Meridian lists these services despite that fact that the Chancellor did not include them in his list of benefits accruing to PAA residents. See M.B. 42.

the street construction service offered by the City is in no way “enhanced” when compared to the County’s.

The benefits touted by the City of Meridian are not benefits at all, pure and simple. Residents of the PAA are completely happy with the services they are currently provided. As Ms. Martin so aptly stated, Meridian has nothing to offer PAA residents.¹⁰ Tr. 1228. Ms. Martin’s statement recognizes that “enhanced” services and “potential” benefits exist only on paper. As this Court stated in *Poole*, 908 So. 2d at 740, when existing services are adequate, the fact that municipal services may enhance the service provided is not relevant. To take this issue a step further, in the case at hand, not a single PAA resident testified that City services are needed in the PAA, unlike in *City of Columbus* where some county residents supported annexation as a means of obtaining city services. *See* 644 So. 2d at 1178.

The testimony offered by Supervisor Harper, the individual elected to represent the residents of Parcel 1, echoed the testimony of Ms. Martin. Supervisor Harper testified that the services currently provided within Parcel 1 are adequate and that the City cannot offer services superior to those offered by the County. Tr. 1131, 1141. He also testified that in his role as supervisor, he has received no requests from Parcel 1 residents for additional fire protection, additional zoning and planning/code enforcement, or water/sewer upgrades, and that that Parcel 1 is generally crime free. Tr. 1133-34. Finally, he testified that the fire protection currently offered to Parcel 1 residents is top notch, that the police protection currently provided within Parcel 1 is “second to none”, and that the water and sewer services currently provided in Parcel 1 are more than adequate. Tr. 1148.

The evidence, then, demonstrates that the Chancellor committed manifest error by finding that “residents and property owners in the PAA will receive valuable services in return

¹⁰ Furthermore, Dr. Martin testified that if annexed, PAA residents would be forced to pay taxes for services that are not needed. Tr. 1057.

for the additional taxes they will pay.” M.B. 42. There is simply no substantial and credible evidence to support this finding.

C. Meridian’s Past Performance Record Weighs Strongly Against Annexation.

The heightened level of significance that this Court places on a city’s past performance record is demonstrated in two somewhat recent decisions involving the City of Jackson. In *City of Jackson II*, 912 So. 2d at 963, this Court opened its opinion by addressing the city’s poor past performance. And, in *In re the Exclusion of Certain Territory from the City of Jackson*, 698 So. 2d 490 (Miss. 1997), this Court deannexed territory from Jackson, based in large part on the city’s failure to provide promised services to a previously annexed area.

When analyzing a city’s past performance record, this Court should go beyond the boilerplate language asserted by the City of Meridian and adopted by the Chancellor. The testimony of current city residents should be given great weight.¹¹ In this case, the only disinterested Meridian resident to testify concerning the City’s past performance record was Mr. Donald Starks. Meridian understandably chose to wholly ignore this testimony and other testimony condemning the City’s poor past performance record, instead asserting that Appellants rely on only portions of the evidence. M.B. 41-42.

Mr. Starks testified at length concerning Meridian’s poor past performance in his neighborhood. He testified, in part, as follows:

Q. Can you tell the Court whether or not you’re satisfied with the city services that are provided to you by the City of Meridian?

A. By services you mean?

Q. Ditching, voting, that sort of thing?

¹¹ In *City of Jackson*, 691 So. 2d at 984, this Court cited at length the testimony of Jackson residents when considering the city’s past performance record.

A. No. No. When we first moved here from Colorado the - - we found out that the area that we lived in had been annexed in 1995, and the sewer hadn't been put down in 2001. And the streets still had not been paved.

But the problem - - well, the streets were eventually paved by the county in 2003, December of 2003. The roads were not maintained at all.

I drove the Alaska Highway in 1973, and that road was better than Tanner Circle and Scruggs Road.

But every time since then, we've tried to get the city to come out and clean out the ditches for draining purposes, and it just falls on deaf ears. They still won't do it.

When I call the - - I usually get the runaround. And I don't write the name down, because it's - - there is no point in it.

But the ditches are in such bad shape that some of the ditches are completely filled in and grass growing on it level with the road.

And if you want to see a good example - - or a bad example of how the drainage is treated in that area, you just need to look at my mailbox. From the road, the ditch is completely filled in.

And the city did come out earlier this year. And instead of having a ditch that is actually a drainage ditch, they have one shovel-width wide around the back of my mailbox. And that was their way of treating the drainage, instead of having a regular drainage.

And where the ditches are supposed to be, weeds grow up. And we have - - we just have - - it's about like pulling chicken teeth to get the city to come out and mow the sides of the roads.

It's - - if there were a rating between poor and nonexistent, that's the rating that I would have to give the city as far as maintenance.

Q. Now, is this issue with the ditches unique to your property, or is this widespread?

A. Not my property as much as - - but throughout the subdivision. Our neighbor across the road had to build a dam, so to speak, to keep the water from running across Tanner Circle through the cemetery for Mt. View Baptist and run into his house.

And there is other areas that are similar to that too. There is one on Tanner Road that there is no shoulder at all. That just happens to be one that does have a ditch. But if a car were to go off the blacktop, they would drop into a hole that would probably take two wreckers to get it out.

But the shoulders of the road are not maintained. They're either washed out to where there are ditches, but the drainage ditches are general there - - and every time we call, there is - - we just get the runaround. We'll send somebody out. We'll tell so - and - so just generally, the runaround.

In other words, since we've been annexed it's like, well, we've got you now. You can't do anything about it.

Q. What problems, if any, with city services other than drainage?

Tell the Court what happens when it rains. What problems, if any, occur?

A. It runs across the road and washes gravel out on the road which, you know, it -
- and of course, that's never cleaned off the road.

And generally, they - - the city just never comes out in that area. That area might as well be still in the county as far as city services go.

Q. Do you know whether or not any of the drainage problems have caused a lot of water to go into any of the homes out there?

A. It has in the one across the road from where we live, yes.

Q. What other problems have you encountered other than drains that have not been assisted by the city?

A. Right now we're like the rest of the city waiting on cleanup from Katrina. But the trees that were across the road after Hurricane Katrina, the city did not come out in that area. The trees were actually moved by the citizens in that area, cut up and then moved

Tr. 1240-43 (emphasis added). While Appellants could go on with the testimony of Mr. Starks, the Court likely sees the point, which Mr. Starks summed up nicely when he stated that "Meridian doesn't take care of what it already has, let alone what it wants to annex and what it already has annexed." Tr. 1245.

Mr. Starks' contention that Meridian city officials simply do not care about solving problems faced by its residents is actually supported by the testimony of the City's Public Works Director. When confronted with Mr. Starks' testimony concerning flooding due to inadequate drainage systems in the area Meridian annexed in 1995, Meridian's Public Works Director responded by stating that "some people's problems aren't as big a problem as they think it is." Tr. 1456. This comment certainly lends credence to the "we've got you now" attitude about which Mr. Starks testified and surely raises justifiable concerns among those faced with the prospect of being brought into Meridian against their will that Meridian will not keep its promises.

Mr. Starks was not the only individual to provide specific details concerning the City's abysmal past performance record. Supervisor Harper testified that the infrastructure and road

maintenance provided to previously annexed residents has been insufficient. Tr. 1141. Ms. Martin, a resident of the Sweetgum Bottom area, testified that it took the City nearly eight years to provide water service to residents near her area that were annexed in 1995. Tr. 1233-34. She also testified that as of the time of trial, some ten years after the 1995 annexation, annexed residents of the Sweetgum Bottom area still had not received sewer services from Meridian. Tr. 1234. Meridian's Public Works Director admitted as much when he testified that there are thirty-four residents in the Sweetgum Bottom area annexed in 1995 who have yet to receive sewer services from the City. Tr. 548. He also admitted that there are houses along Knight-Parker Road which were annexed in 1995 that have not received sewer services from the City. Tr. 579-80. Finally, he testified that certain areas along Highway 80 which were annexed in 1995 did not receive sewer service until nine years after being annexed. Tr. 580.

Finally, the City's own exhibits demonstrate its poor past performance record. As stated in Appellants' principal brief, Meridian's 2003 Comprehensive Plan, adopted some eight years after the City's last annexation, recommends making improvements to a number of roads within the 1995 annexation area that are still not completed and were needed even more at the time of the current annexation attempt. See Exhibit P-019, page 56.

As demonstrated above, while Meridian may have provided some services to previously annexed areas, a large number of needed services remain unfulfilled. In addition, numerous services that are provided are performed in such a half-hearted manner as to render them ineffective. This evidence leads to the conclusion that the Chancellor committed manifest error by finding that the past performance indicium weighs in favor of annexation. The Chancellor's finding is simply not supported by substantial and credible evidence.

III. CONCLUSION

The above-cited evidence demonstrates that annexation of the area in question by Meridian is not reasonable. The City of Meridian has failed to meet its burden of proof with regard to three factors upon which this Court places a heightened level of significance. Any city whose population has decreased significantly over a period in excess of forty years, despite numerous intervening annexations, which will provide little or no benefits to residents it is attempting to bring in against their will, and which has failed to demonstrate a track record of providing satisfactory services to previously annexed residents, cannot demonstrate that annexation is reasonable under the totality of the circumstances. Appellants respectfully submit that the Chancellor's decision should be reversed and rendered.

Respectfully Submitted this the 24th day of January, 2008.

**BY: TOWN OF MARION, MISSISSIPPI;
LAUDERDALE COUNTY, MISSISSIPPI;
CITIZENS AGAINST ANNEXATION; and
EAGLE POINTE HOMEOWNER'S
ASSOCIATION, INC.**

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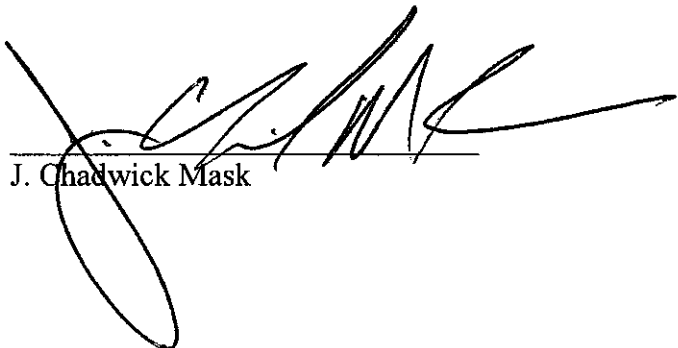
CERTIFICATE OF SERVICE

I, J. Chadwick Mask, attorney for the Appellants, do hereby certify that a copy of the Appellants' Reply Brief was served by United States Mail, first class postage prepaid to the following:

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This the 24th day of January, 2008.



J. Chadwick Mask