

**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**

**V.**

**CITY OF MERIDIAN**

**APPELLEES**

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

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**BRIEF OF APPELLANT, LAUDERDALE COUNTY, MISSISSIPPI**

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**CERTIFICATE OF INTERESTED PERSONS**

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

Mayor and City Council  
City of Meridian, Mississippi

Board of Supervisors  
Lauderdale County, Mississippi

Mayor and Board of Aldermen  
The Town of Marion, Mississippi

Citizens Against Annexation

Eagle Pointe Homeowner's Association, Inc.


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## **I. STATEMENT OF THE ISSUE**

Whether the Chancellor erred by finding that the annexation in its entirety is reasonable under the totality of the circumstances.

## **II. STATEMENT OF THE CASE**

### **A. Statement of Facts**

This appeal involves a municipal expansion effort undertaken by the City of Meridian, Mississippi. On August 27, 2002, Meridian filed its annexation petition seeking to annex approximately 9.3 square miles of unincorporated territory located wholly within Lauderdale County, Mississippi. Pl. 6-23.<sup>1</sup> On November 27, 2002, the Town of Marion, Mississippi filed its formal objection to Meridian's annexation petition. Pl. 64-65. Subsequently, on December 13, 2002, Lauderdale County, the Citizens Against Annexation, and the Eagle Pointe Homeowners' Association filed an answer opposing Meridian's annexation petition.<sup>2</sup> Pl. 67-70.

The trial of this matter began on Monday, October 31, 2005 and continued until Wednesday, November 16, 2005. The Chancellor issued his Findings of Fact and Conclusions of Law on June 12, 2006, and later issued his Final Judgment Approving the Enlargement and Extension of the Boundaries of the City of Meridian, Mississippi on August, 10, 2006. Pl. 417-34, 435-53. In his ruling, the Chancellor granted Meridian all of the territory it sought to annex, with the exception of the northernmost portion of Parcel 3, which is immediately to the east of the eastern boundary of Marion. Pl. 433-34.

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<sup>1</sup> Citations to the portion of the record containing the trial court pleadings will be cited as "Pl. 1, Pl. 2", etc. Citations to portions of the record containing the trial exhibits will be cited as: "R. 1, R. 2.", etc. Citations to the court reporter's transcript will be cited as: "Tr. 1, Tr. 2", etc.

<sup>2</sup> Although the Chancellor stated in his Findings of Fact and Conclusions of Law that "there has been no objection to the annexation of parcels 2 or 4 to the City of Meridian", the Separate Answer and Defenses of Lauderdale County clearly states as its sixth defense that "Meridian's proposed annexation does not satisfy any of the twelve indicia of reasonableness set forth by the Mississippi Supreme Court." Pl. 68. This statement clearly applies to the annexation as a whole, not just Parcels 1 and 3. As a result, the Chancellor incorrectly stated that there was no objection with regard to Parcels 2 and 4.

## **B. Statement of the Law**

### **1. Reasonableness**

In *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Madison*, 650 So. 2d 490, 494 (Miss. 1995) (internal citations omitted), this Court stated

While annexation is a legislative affair, confirmation of annexations is in the province of the chancery court. The role of the judiciary in annexations is limited to one question: whether the annexation is reasonable. Courts are "guided" in this determination of reasonableness by twelve factors previously set forth by this Court.

The twelve "indicia of reasonableness" that the courts of this state consider when called upon to determine the reasonableness of a municipality's proposed annexation under the totality of the circumstances are as follows:

1. The municipality's need for expansion;
2. Whether the area sought to be annexed is within the 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 proposed annexation area;
8. The past performance and time element involved in the city's provision of services to its present residents;
9. The impact (economic or otherwise) of the annexation upon those who live or own property in the area proposed for annexation;
10. The impact of the annexation upon the voting strength of protected minority groups;
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 or social) benefits of proximity to the municipality without paying their fair share of taxes; and

12. Any other factors that affect reasonableness.

*See In re Exclusion of Certain Territory from City of Jackson*, 698 So. 2d 490, 493 (Miss. 1997).

The municipality seeking annexation carries the burden of showing that the proposed enlargement is in fact reasonable. Miss. Code Ann. § 21-1-33. While this Court has retained these twelve indicia for consideration in annexation cases, the Court in *In re the Extension of the Boundaries of the City of Columbus*, 644 So. 2d 1168, 1172 (Miss. 1994), stated that "fairness to all parties has always been the proper focus of our reasonableness inquiry. Thus, . . . 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."

**2. Standard of Review**

This Court will 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 the Matter of the Confirmation and Alteration of the Boundaries of the City of Horn Lake*, 630 So. 2d 10, 16 (Miss. 1993).

**III. SUMMARY OF THE ARGUMENT**

The Chancellor's decision approving Meridian's proposed annexation in its entirety (with the exception of the small parcel of land east of the municipal limits of Marion) is manifestly wrong. Furthermore, the Chancellor's decision to approve the expansion of the municipal limits of Meridian is not supported by substantial and credible evidence. No portion of the proposed annexation area ("PAA") should have been granted to Meridian. The annexation approved by the Chancellor is not fair and is not reasonable under the totality of the circumstances.

#### IV. ARGUMENT

##### **The Chancellor's Decision to Approve the Expansion of the Municipal Limits of Meridian Was Manifestly Wrong Under the Indicia of Reasonableness Set Forth by This Court.**

##### **A. Meridian Has Not Demonstrated a Need to Expand.<sup>3</sup>**

While all twelve of the above-listed indicia must be considered in determining whether an annexation is reasonable, consideration of a city's need to expand is crucial. This indicium is first on the list for a reason. If a city cannot demonstrate a need to expand, it is difficult indeed to fathom how such a city can meet its burden of demonstrating that the expansion it seeks is reasonable. Consideration of the following factors reveals that the Chancellor was manifestly wrong in his determination that Meridian has demonstrated a need to expand, and that the Chancellor's decision is not supported by substantial and credible evidence.

##### **1. Meridian's Population Has Been Shrinking for Decades.**

The Chancellor noted the importance of population growth when he stated in his Findings of Fact and Conclusions of Law that "[t]he glaring impediment to the City's need for expansion is the continuing loss of population." Pl. 423. This Court has recognized the importance of this factor to the overall reasonableness analysis as well. In *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson*, 691 So. 2d 978, 981 (Miss. 1997), this Court stated that a lack of significant population growth must be considered an impediment to annexation.

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<sup>3</sup> Among the factors that have been considered by this Court in determining whether a municipality has demonstrated a need to expand are: 1) whether the municipality is experiencing population growth, *See In the Matter of the Extension of the Boundaries of the City of Ridgeland*, 651 So. 2d 548, 553 (Miss. 1995); 2) whether "spillover" development has occurred in the PAA, *Ridgeland*, 651 So. 2d at 554; 3) remaining vacant land within the municipality, *Id.* at 555; 4) the city's need for vacant developable land, *Columbus*, 644 So. 2d at 1173; 5) need to maintain or expand the city's tax base, *Jackson*, 691 So. 2d at 982; 6) increasing traffic counts, *In the Matter of the Enlargement and Extension of the Munic. Boundaries of the City of Biloxi*, 744 So. 2d 270, 279 (Miss. 1999); and 7) increased new building permit activity, *Ridgeland*, 651 So. 2d at 554.

In this case, Meridian has not only failed to sustain significant population growth, it has continuously suffered population loss for years. The lack of population growth experienced by Meridian stands as an undeniable road block in the City's annexation path. Typically, a city seeking to annex territory advances Census reports and other data demonstrating its population growth. In this case, Meridian has presented no such evidence because the data instead demonstrates the City's steady, decades-long decline in population.

The evidence is undisputed that Meridian's population pool is in long-term decline. Meridian has experienced significant **population loss** for the past several decades. R. 1235, 1541. According to Census Bureau estimates, the City's population decreased by 1135 in the short time span between the 2000 Census and 2004, when the estimates were made. Tr. 1289. This spike in population loss is not an aberration. Instead, it reflects the continuance of a decades-long downward spiral. In 1960, Meridian's population totaled 49,374. By 2003, this number had plummeted by approximately 10,000 to 39,559. R. 1235, 1541. To provide a different perspective, during this half-century span Meridian's population decreased by an average of 228 people per year. R. 1235. Meridian's population is expected to continue this downward spiral, as evidenced by 2009 population forecasts which predict a 2009 population of between 37,647 (ESRI estimate) and 38,436 (Claritas estimate).<sup>4</sup> R. 1542, 1543.

The continuous dramatic population loss experienced by Meridian occurred during a period in which the City expanded its boundaries by some 88% via 5 annexations since 1960. R. 11 (map)<sup>5</sup>. The land area of Meridian in 1960 was 24.0 square miles. R. 1240. By 2000, the land area of the City had grown to 45.12 square miles. Id. In other words, during the 40 year period from 1960 to 2000, the land area of Meridian increased by 88% (24.0 square miles to

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<sup>4</sup> These population figures are not confined to Meridian. Lauderdale County as a whole has lost population since 2000 as well. R. 1540, Tr. 1293

<sup>5</sup> The originals of all maps were forwarded to the Supreme Court by the Lauderdale County Chancery Clerk.

45.12 square miles) as a result of 5 municipal annexations, R. 11 (map), 1240, but the City's population still plummeted by nearly 20% (from 49,374 to 39,968). R. 1235, Tr. 1292. The Chancellor should have given great weight to this critical and extremely telling evidence in his Final Judgment and/or in his Findings of Fact and Conclusions of Law. Instead, he ignored it altogether, and his decision is contrary to this Court's holding in *In the Matter of the Enlargement of the Corporate Limits of the City of Hattiesburg*, 588 So. 2d 814, 821 (Miss. 1991) that past annexations must be taken into account when considering a city's population growth. In *Hattiesburg*, 588 So. 2d at 821, this Court noted that while the city's population increased slightly from 1980 to 1990, the city experienced no real growth during that time period because the population increase was attributable to numerous annexations. *Hattiesburg*, 588 So. 2d at 821. Meridian cannot even demonstrate a slight population increase since 1960. Once again, the City's population went down by 20% despite 5 annexations that almost doubled its size over a forty-year time span (1960 to 2000).

This Court cannot ignore the fact that both Meridian and Lauderdale County have experienced, continue to experience, and are expected to experience population decline. R. 1235, 1237, 1541-43. A city that is not growing and that is experiencing significant long-term population decline cannot demonstrate a need to expand. Meridian has failed to establish - or even credibly suggest - otherwise. **This factor alone demonstrates that the annexation approved by the Chancellor is not reasonable.**

**2. There Is No Spillover Growth Attributable to Meridian.**

No one disputes that Meridian is the largest community in Lauderdale County. It is significant, however, that the Town of Marion has captured an important part of the Lauderdale County residential market. Tr. 962-64, 1294. Marion is also currently providing water and sewer services to the industrial park and sewer services to portions of the PAA to the north and

east of the City. Tr. 966-67, 969. This evidence demonstrates that a number of the new developments within the PAA have resulted from investments made by Marion in water and sewer infrastructure in the area. Despite these capital investments made by Marion, and the fact that much of the expansion in the PAA is contiguous with Marion, the Chancellor apparently ignored Marion's impact on the PAA in his Findings of Fact and Conclusions of Law. Pl. 421-24. In addition, common sense mandates that a City in the midst of long-term decline cannot be credited with any spillover growth. The development that may have occurred in the PAA is more accurately described as transferred population rather than spillover growth, and much of the transferred population has transferred completely out of Lauderdale County. The City flunks the "spillover growth" factor in the need to expand indicium of reasonableness.

### **3. Meridian Has Ample Vacant Land Within Its City Limits.**

With regard to this factor, the Chancellor cited the high number of building permits issued by the City, the supposed lack of suitable land for development within the City, the number of new residential units constructed within the City, economic growth within the City, and the high number of building conversions/additions occurring within the City. These factors simply do not support the conclusion that Meridian has a need for developable land.

It is undisputed that there are 17.3 square miles, or approximately 11,000 acres, of vacant land inside the City of Meridian. R. 1106. However, it is also undisputed that Meridian has experienced long-term population decline, R. 1235, 1540, loss of dwelling units since 1980, R. 1239, and that the demolition of dwelling units has outnumbered the construction of new dwelling units since 1993. R. 1256. Meridian has lost an average of 36 residential dwelling units a year since 1993. Id. The City experienced a net loss of 403 residential units during the same period. Id. Furthermore, it is undisputed that Meridian is experiencing decreasing school enrollment, a stagnant civilian labor force, and increasing unemployment. R. 1246, 1248, 1254.

In addition, Meridian has exaggerated actual constraints on vacant land inside the City. The unreliability of Meridian's proof on the issue of land constraints is revealed by the fact that the City's 1999 Comprehensive Plan shows a total of 25.5% of the City's vacant land as undevelopable. R. 1937. The City's 2003 Comprehensive Plan reflects the identical amount of undevelopable land, 25.5%. Exhibit P-019 Table 7,<sup>6</sup> Tr. 1300-01. It is extremely unlikely that the total percent of vacant developable land in a City composed of thousands of acres could remain exactly the same. Even more remarkable and revealing is that water and waterways, floodways, flood plains, and severe sloping lands in excess of 15% all reflect the identical percentages in the 1999 and 2003 Comprehensive Plans. R. 1937, Exhibit P-019 Table 7. This statistical anomaly demonstrates the unreliability of Meridian's claims concerning constraints on development within the City. Even if Meridian's numbers concerning constrained land are correct, constraints do not necessarily dictate that the land containing constraints cannot or will not be developed. Flood plains and sloped land are constantly developed throughout this State.

Finally, the Chancellor's contention that the number of building permits issued by the City, along with the high number of additions/conversions to buildings within the City, demonstrates a need for vacant developable land is not supported by the evidence. Jimmy Gouras, an expert in the field of urban and regional planning, testified that the impact of the number of building permits issued by Meridian is diminished by the fact that demolitions have outnumbered residential construction for years. Tr. 1309. Mr. Gouras also testified that the number of alteration permits issued by the City does not demonstrate a lack of developable land, rather it demonstrates the fact that homeowners must obtain a permit in order to do anything from adding a garage to putting a new roof on a home. Id.

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<sup>6</sup> Exhibit P-019 was not included in the record originally sent from the Chancery Clerk to the Supreme Court. The exhibit was sent at a later date by the Chancery Clerk; thus, it is not numbered consistently with the remainder of the record. As a result, this exhibit will simply be cited as "Exhibit P-019" followed by additional information pinpointing the exact portion of the exhibit cited.



This Court must not abandon common sense when considering the Chancellor's decision that Meridian has demonstrated a need to expand. A City that is experiencing **long-term decline** in population, dwelling units, school enrollment, and increasing unemployment cannot demonstrate a need for more land. Furthermore, as stated above, the Chancellor's reliance on building permit numbers as an indicator of such a need is misplaced. These factors, coupled with the unreliable land constraint numbers provided by Meridian, show that the City failed to meet its burden of demonstrating a need to expand.

#### **4. The Need for Meridian to Expand Its Tax Base.**

This Court has long been very skeptical of municipalities pursuing additional land for the purpose of securing tax revenues. In *Jackson*, 691 So. 2d at 982, this Court stated that "[a]lthough it has been held that a city's need to maintain or expand its tax base, especially as growth and development occurs on its perimeters, is a factor to be considered when determining the reasonableness of a proposed annexation, this Court has in the past, been very critical of annexations which are in effect 'tax grabs.'" Furthermore, this Court held over a century ago that "[m]unicipalities are not designed for the purpose solely, nor chiefly, of raising revenue." *Forbes v. City of Meridian*, 38 So. 676, 678 (Miss. 1905). Lauderdale County is not suggesting that there are never instances in which a city legitimately needs to increase its tax base via annexation. Rather, Lauderdale County suggests that the evidence is clear that Meridian does not need to expand its tax base via annexation at this time.

As previously mentioned, Meridian has ample vacant developable land within its corporate limits. If Meridian has a need to expand its tax base, there are ample opportunities to do so within the current City limits, without imposing additional taxes on citizens currently residing in the County. While the Chancellor failed to consider this factor in his Findings of Fact and Conclusions of Law, the evidence presented in this case demonstrates that Meridian will

continue to have a healthy tax base without the additional taxes that would be created by this annexation. Mr. Gouras testified that Meridian can continue to grow its tax base even if the annexation is not granted. Tr. 1351. In addition, even though Meridian annexed only a small piece of land in November 2004, the amount of gross taxes received by the City of Meridian increased every year from 2001 until 2004, as demonstrated by Mississippi State Tax Commission Reports generated for each of those years. R. 1463, 1466, 1469, 1472. According to Meridian's Annexation Implementation Plan, the projected assessed values for 2006, based upon the City as configured at the time of trial, totaled \$259,377,875. R. 42. This number is projected to increase in each fiscal year through 2010, when it is estimated that assessed values will be \$290,800,017 for the City as configured at the time of trial. Id. Obviously, if Meridian's tax base is expected to increase even without the additional tax revenue that would be generated through this annexation, the City has not demonstrated a sufficient need to expand its tax base via this proposed annexation. Meridian's pursuit of this annexation is in effect a "tax grab", as this Court used that term in the *Jackson* case.

**5. The Slight Traffic Increases in the PAA Do Not Demonstrate a Need to Expand.**

In the past, when determining that this factor weighs in favor of annexation, this Court has generally cited to drastic increases in traffic or traffic congestion. For instance, in *Biloxi*, 744 So. 2d at 279, the Court noted that "[t]raffic counts have increased substantially in Biloxi over the last ten years." In addition, in *In the Matter of the Extension of the Boundaries of the City of Winona*, 879 So. 2d 966, 978 (Miss. 2004), the Court cited testimony that traffic close to the PAA increased by anywhere from 69% to 81% over a 10 year span. Although the Chancellor failed to consider this factor in his Findings of Fact and Conclusions of Law, the evidence presented at trial did not reflect such drastic traffic increases in and around the PAA. The evidence shows increases ranging from 16.4% to 59% in portions of Parcel 1. R. 60 (map), 1104

(map), 1105. However, Naval Air Station Meridian lies to the north of Parcel 1 and is connected to Meridian by Highway 39 and other transportation routes. Meridian failed to establish that the ordinary traffic increases in Parcel 1 are properly attributable to Meridian growth. The Naval Air Station could just as easily account for these increases. Meridian presented no evidence whatsoever of increased traffic counts in Parcels 2 and 3. As a result, Meridian failed to meet its burden of proof on this issue.

**6. Any Increase in Building Permit Activity Is Not Attributable to Meridian Growth.**

As stated above, while the evidence suggests that the number of building permits issued is on the rise, when the type of permits issued is considered, it is clear that this increase is overwhelmingly attributable to alterations, restorations, and repairs rather than to real growth within Meridian. Not only did Mr. Gouras testify to this, but the numbers on the City's own exhibit P-010 demonstrate it. R. 378, Tr. 1309. As the Chancellor noted, "Meridian is an old city . . . ." Pl. 423. As such, buildings within its limits are naturally in need of repair. The aging state of the City explains why the number of building permits issued is on the rise.

The evidence and testimony cited above clearly demonstrate that the City of Meridian has not met its burden of proving that a need to expand exists. As a result, the Chancellor was manifestly wrong in his determination that a need to expand exists, and this determination is not supported by substantial and credible evidence. In addition, as noted above, a City that has no need to expand has an overwhelming burden to carry in order to establish that its proposed annexation is reasonable.

**B. The PAA Is Not Within Meridian's Path of Growth.**

As demonstrated above, Meridian has not presented evidence of population growth or employment growth. Obviously, without growth, there can be no path of growth.<sup>7</sup> While Meridian may have a path of desired expansion based upon past annexations, the City can demonstrate no path of growth that is attributable to new development within its current boundaries. While the Chancellor's Findings of Fact and Conclusions of Law related to this factor focused on alleged spillover growth in the PAA and the adjacency of the PAA to Meridian, Pl. 424-25, this Court has recognized a number of factors with regard to this indicium.<sup>8</sup> After consideration of these factors, it is apparent that the PAA is not in Meridian's path of growth. As a result, the Chancellor was manifestly wrong in his determination that the PAA is within Meridian's path of growth, and this decision is not supported by substantial and credible evidence.

**1. There Is No Spillover Growth Attributable to Meridian.**

As stated above, the evidence shows that much of any development occurring in Parcel 1 of the PAA is attributable to investments made by Marion. Much of the development is contiguous to Marion and is logically an extension of Marion. R.60 (map). Furthermore, it is difficult to fathom how a City that is in a long-term downward spiral can be credited with any spillover growth whatsoever.

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<sup>7</sup> In *In the Matter of the Enlargement of the Corporate Limits & Boundaries of the City of Gulfport*, 627 So. 2d 292, 295 (Miss. 1993) (Smith, J., dissenting), Justice Smith recognized the obvious fact that without growth, there can be no path of growth.

<sup>8</sup> These factors include: 1) spillover development in the PAA; 2) evidence that the PAA is immediately adjacent to the city; 3) limited area available for expansion; 4) interconnection by transportation corridors; 5) increased urban development within the PAA; 6) geography; 7) subdivision development; see *In the Matter of the Enlargement and Expansion of the Munic. Boundaries of the City of Jackson*, 912 So. 2d 961, 966 (Miss. 2005), and 8) extension of utilities by the annexing municipality into the PAA. See *City of Jackson v. City of Ridgeland*, 388 So. 2d 152, 156 (Miss. 1980).

**2. Much of the PAA Is Adjacent to Marion as Well as Meridian.**

The evidence establishes that parts of the PAA are contiguous and adjacent to the existing City of Meridian. R. 60 (map). While this may be the case, the evidence also establishes that Parcels 1, 2, and 3 are contiguous to the existing Town of Marion. Id. As a result, this factor does not weigh in favor of annexation by Meridian.

**3. Meridian Has Vast Areas of Land Readily Available for Expansion.**

The evidence shows that Meridian has a broad range of areas available for expansion. Id. The only limitation is the one that Marion poses to the northeast. Id. Meridian has territory to its southeast, south, southwest, west, and northwest readily available for future expansion. Id. Strikingly, each of these alternative paths of growth contain major transportation corridors connecting them to Meridian (Highway 19 to the southeast, Highway 45 to the south, Interstate 20 and Highway 19 to the west, and Highway 493 to the northwest). Id. There is simply no credible evidence that Meridian has limited areas available for future expansion.

**4. Much of the PAA Is Not Easily Accessible From Meridian.**

The Chancellor was manifestly wrong in his determination that the City is directly connected to the PAA by public transportation routes. Pl. 424. The record shows that there are limited transportation corridors from Meridian into Parcels 2 and 3 of the PAA. R. 60 (map). The map of the PAA shows that there is virtually no access into Parcel 2 and that the vast majority of Parcel 3 is not readily accessible from Meridian. Id. In addition, Mayor Elvis Hudson (Mayor of the Town of Marion) testified that Meridian has no roads connecting the City to the northern portion of Parcel 3. Tr. 973. Mayor Hudson further testified that the most direct method of entering this portion of Parcel 3 from much of Meridian is to travel through Marion. Id. Finally, much of Parcel 1 is interconnected by transportation corridors from Marion and not from Meridian. R. 60 (map).

**5. The PAA Contains Only Limited Urban Development.**

The evidence shows that while there is what Mr. Gouras termed "urban development within a rural setting," Tr. 1312, in portions of the PAA to the north and to the east of the City, much of the remainder of the PAA is largely undeveloped. *Id.* A view of the subdivision map for Meridian and the PAA reveals that large portions of Parcels 1 and 3 are undeveloped, while Parcels 2 and 4 are generally undeveloped. R. 1062 (map). The limited "urban development within a rural setting" to the north and east of Meridian is not sufficient to overcome the lack of any development in the remaining areas.

**6. Geography**

The PAA's potential infringement on Marion's path of growth is noteworthy. Mr. Gouras testified that the annexation, if allowed, would be extremely detrimental to Marion. Tr. 1351. This negative impact will be discussed in greater detail *supra*.

**7. The Subdivision Development That Exists Is Not the Result of Meridian Growth.**

Much of any subdivision development in the PAA is a transfer of existing population from within Meridian and did not result from real Meridian growth. In fact, Mr. Gouras testified that most of the development occurring in the northern annexation area resulted from investments made by the Town of Marion, not by Meridian. Tr. 1293-94. It bears repeating that there is no evidence - none - of infrastructure investment by Meridian in any portion of the PAA, with the possible exception of Parcel 4.

**8. Meridian Has Not Extended Utility Services Into the PAA.**

In *Jackson*, 388 So. 2d at 156, this Court agreed with the chancellor's finding that Ridgeland's extension of utilities into the PAA served as one indicator that the PAA was in the city's path of growth. Meridian presented no evidence of the extension of its utility services to residents of the PAA.

This Court has held that the most important factors to consider when addressing the reasonableness of a given path of growth are "the adjacency of the proposed annexation area to the City, accessibility of the proposed annexation area by City streets, and spillover of urban development into the proposed annexation area." *See In the Matter of the Enlargement and Extension of the Boundaries of the City of Macon*, 854 So. 2d 1029, 1037 (Miss. 2003). As demonstrated above, of these factors, only adjacency arguably weighs in favor of this annexation. The combination of the two additional factors, along with the other factors discussed above, clearly demonstrates that the City of Meridian has not met its burden of proving that the PAA is within the City's path of growth. In fact, Meridian has failed to demonstrate that a city that is not growing can have a path of growth.

**C. Health Hazards in the PAA Do Not Warrant Annexation.<sup>9</sup>**

With regard to this indicium, the Chancellor placed great weight on sewage disposal problems within the PAA, specifically citing to the testimony of "[r]epresentatives of the Mississippi State Department of Health." While these conditions do exist within the PAA, it is noteworthy that they are not prevalent in Parcel 1, particularly in the Eagle Pointe Area, and in other subdivisions which have sewage treatment facilities. Tr. 1314-15. In addition, these conditions are not widespread in the area immediately north of Marion which receives sewer services from Marion. Tr. 966-67. The fact is, the evidence is undisputed that the health department has received no complaints - none - concerning health hazards resulting from septic tank problems in any portion of the PAA. Tr. 526, 1314. Despite the fact that a health department representative toured the PAA in order to "make a case" for the need for municipal

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<sup>9</sup> Factors that this Court has considered in the past with regard to potential health hazards include: (1) potential health hazards from sewage and waste disposal, (2) a large number of septic tanks in the area, (3) soil conditions which are not conducive to on-site septic systems, (4) open dumping of garbage, and (5) standing water and sewage. *See Jackson*, 912 So.2d at 967.

sewer services, there is no evidence of any problem severe enough to bring the health department to take corrective action. *Id.* Considering the fact that the most populated areas of the PAA have their own sewage treatment provider and/or have their sewage collected by Marion, the Chancellor was manifestly wrong in his determination that there are "widespread failures" of septic tanks within the PAA. Pl. 425. In addition, it is clear that this determination is not supported by substantial and credible evidence.

Potential health hazards are, of course, irrelevant to annexation if the annexing municipality is unable or unwilling to address them. In the past, this Court has recognized that when a municipality is unable or unwilling to provide promised services, that municipality should not be allowed to annex. *See Exclusion of Territory From Jackson*, 698 So. 2d at 494. Meridian has not extended utility services to any portion of the PAA. There is substantial evidence that Meridian has serious problems with sewage and other issues within its existing corporate limits. The Director of Public Works for the City of Meridian admitted that the City has experienced numerous large scale problems with its sewer system in recent years<sup>10</sup>. Tr. 1450-51. In particular, the lift station on Cotton Gin Road failed on four separate occasions over a five month period, resulting in spills of varying amounts up to 20,000 gallons. R. 1226-33. A single spill produced health hazards that far exceed the hazard level proven by Meridian to exist anywhere in the PAA. The four spills combined exposed Meridian residents to 28,500 gallons of raw sewage. *Id.*<sup>11</sup> This means that residents of Meridian were exposed, in five months, to enough raw sewage to completely fill a swimming pool with a diameter of 33 feet and a depth of

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<sup>10</sup> Portions of the transcript of Montey Jackson's (Director of Public Works for the City of Meridian) testimony are incorrectly identified as the testimony of Chief Michael McCary.

<sup>11</sup> In addition to these spills, the Mayor of Marion testified that he has personally witnessed ten to fifteen raw sewage spills since the lift station on Cotton Gin Road began operating. Tr. 982-83.



52 inches, with 2800 gallons left over.<sup>12</sup> In a word, it is **shocking** that a municipality that exposed its citizens to such a large scale health hazard would attempt to credibly suggest that it can in any way correct health hazards in the PAA.

In addition to the massive amounts of sewage spilled within Meridian, the City's Director of Public Works admitted that the City has an ongoing, unresolved odor problem stemming from its sewer system. Tr. 1453. Mr. Richard Gray, a resident of Meridian, testified that despite numerous complaints to the City regarding this "constant stink", nothing has been done to remedy the problem. Tr. 1121. The Chancellor also heard testimony from Ms. Sadie Martin, a resident of the PAA, concerning her observance, on multiple occasions, of flooding problems in downtown Meridian. Tr. 1230. Finally, Mr. Donald Starks, a resident of Meridian, testified concerning his knowledge of drainage problems on Tanner Circle which caused water to flow onto the streets and enter homes. Tr. 1239, 1242. When questioned about this testimony, the City's Director of Public Works responded by stating that "some people's problems aren't as big a problem as they think it is." Tr. 1456. This attitude from a senior City official certainly does not suggest that the City is prepared, able, or willing to address any health hazards that may exist within the PAA.

The evidence cited above clearly shows that the Chancellor was manifestly wrong in his determination that this indicium strongly favors annexation, and that this determination is not supported by substantial and credible evidence. The record is clear that there is more evidence of potential health hazards inside the City of Meridian than in the PAA.

#### **D. Meridian's Financial Ability Is Questionable.**

The City of Meridian's financial consultants failed to explain the City's lack of financial planning at the trial of this matter. Joe David Nichols, an expert in the field of municipal

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<sup>12</sup> See Swimming Pool Water Volume, <http://www.backyardcitypools.com/swimming-pools/Pool-Volume-Calculate.htm> (last visited March 1, 2007).

finances, testified that Meridian currently has no capital improvement plan. Tr. 1268. That a City the size of Meridian would have no semblance of a capital improvement plan is alarming. In fact, Mr. Nichols testified that it is not possible to determine whether a City the size of Meridian has the financial ability to make improvements and furnish promised municipal services when no capital improvement plan is in place. Id. Meridian cannot demonstrate that it has the financial ability to make good on its promises to PAA residents when it has not properly planned for the future of the City's existing residents. As a result, Meridian failed to carry its burden with regard to this indicium and the Chancellor's conclusion regarding the City's financial ability is manifestly wrong and unsupported by substantial and credible evidence.

Even if the City could demonstrate the financial ability to make improvements and furnish municipal services to PAA residents, the Court cannot examine this indicium in isolation. This indicium should be considered in light of the City's past performance record. While Meridian's past performance will be discussed at length *supra*, it is noteworthy that Meridian's past record indicates a lack of willingness or ability, or both, to utilize its financial resources to make improvements and furnish the municipal services promised.

**E. Meridian Offers Little in the Way of Effective Zoning and Planning.**

The Chancellor noted that while Meridian's zoning and code enforcement has problems, the City can provide a higher level of enforcement than that currently existing within the PAA. Pl. 427-28. Even if some areas of the PAA do need zoning and planning, it is noteworthy that Eagle Pointe and other subdivisions in Parcel 1 have protective covenants which address zoning-related problems. Tr. 1303. These areas would clearly gain nothing from Meridian in the way of zoning and planning. In addition, the record reflects that Meridian currently has numerous zoning and planning enforcement problems within its existing corporate limits. R. 1552-1633. These problems include trash piles, illegal dumping, unclean roadways, abandoned vehicles,

non-conforming structures, and numerous subdivision deficiencies. *Id.* Many of these problems lie within areas that have been annexed by the City, demonstrating once again the inability or unwillingness of Meridian to effectively address the needs of annexed areas. *Id.*

Considering these factors, it is clear that the Chancellor was manifestly wrong in his determination that Meridian is currently in a position to provide effective zoning and code enforcement within the PAA and that this determination is not supported by substantial and credible evidence.

**F. PAA Residents Do Not Need Additional Services.<sup>13</sup>**

When considering this indicium, the Court must keep in mind its statement in *Poole v. City of Pearl*, 908 So. 2d 728, 740 (Miss. 2005), that "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." Here, the Chancellor focused on the alleged enhanced level of services that Meridian plans to provide to residents of the PAA, but failed to take into consideration the adequacy of the services currently provided or the conflicting evidence with regard to the level of alleged enhancement. Pl. 428-29.

**1. Meridian Has Received No Requests for Water or Sewer Service.**

The record reflects only two requests for sewer service from within the PAA. One request was made by Lake Cove Subdivision, and the other by Northpark Church, both in Parcel 1. Notably, the requests were not made to Meridian. **Instead, the residents voluntarily directed their requests to Marion.** Marion honored these requests and now provides the

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<sup>13</sup> The factors that this Court has considered related to this indicium include: "(1) requests for water and sewage services, (2) plan of the city to provide first response fire protection, (3) adequacy of existing fire protection, (4) plan of the city to provide police protection, (5) plan of the city to provide increased solid waste collection, and (6) use of septic tanks in the proposed annexation area . . . ." *See Jackson*, 912 So. 2d at 968.

requested sewer service. Tr. 966-67, 1330. The record does not reflect any requests from the PAA to Meridian for water or sewer service.

**2. Meridian's Plan to Provide First Response Fire Protection Would Be Detrimental to Numerous PAA Residents.**

Annexation would eliminate the existing fire station in Parcel 1. The residents of Eagle Pointe and adjoining subdivisions would lose the existing station that lies in close proximity to their homes and investments. R. 22, 928 (map), Tr. 1331. Significantly, Meridian's plan does not provide for the addition of even one fire fighter, administrator, or other personnel to provide increased fire protection. R. 22. Under Meridian's plan, the residents in Parcel 1 would be called upon to lose a nearby fire station. In reality, this would result in a net loss of fire protection in Parcel 1, as the firemen now on duty would be gone. Even if these residents did need additional fire protection, it is undeniable that a net loss cannot fulfill a need. Finally, while Meridian's plan does call for the addition of a 3500 gallon tanker, the tanker will not be devoted solely to the PAA; neither will any fire station, personnel, or other equipment. R. 22, Tr. 1331, 1341. An annexation implementation plan that devotes no resources to the PAA, and forces residents of the PAA to actually lose fire protection not only fails to benefit the PAA in any way, it actually works to the detriment of residents living in the PAA.

**3. PAA Residents Are Satisfied With the Fire Protection Services They Are Currently Receiving.**

It is undisputed that the residents of the PAA are satisfied with the level of fire protection that they are currently receiving and that they do not need or want additional protection from Meridian. Dr. Bubba Martin, a resident of Eagle Pointe, testified that there is a fire station located within minutes of his home and that it is an adequately functioning fire station. Tr. 1049. In addition, Mr. Albert Herrington, also a resident of Eagle Pointe, testified that when called upon, three fire trucks responded to an alarm at his residence within ten minutes. Tr. 1101. Mr.

Herrington further testified that he is satisfied with the fire protection service that is currently provided. Id. Finally, Ms. Sadie Martin, a resident of the Sweetgum Bottom area in Parcel 3 testified that she is satisfied with the performance of the volunteer fire department in the area. Tr. 1236-37.

**4. The City's Plan to Provide Police Protection Would Not Benefit Residents of the PAA.**

The evidence shows that the level of law enforcement protection currently provided to PAA residents is adequate. The PAA has a low level of crime and the sheriff's department currently possesses the ability to address the needs of the area. Tr. 1187, 1189, 1190-93. In fact, the Sheriff of Lauderdale County, as the chief law enforcement officer of the County, testified that there is no need for municipal level police protection in the PAA. Tr. 1193 Furthermore, Dr. Martin and Mr. Herrington both testified that they are satisfied with the level of law enforcement protection currently provided. Tr. 1052, 1100.

The Chancellor heard testimony that there will be no commitment by the police department to provide additional law enforcement or additional law enforcement officers in the PAA. Tr. 1340-41. Instead, additional officers will be assigned to high-crime areas inside the City as it currently exists. Id. In fact, given that the Lauderdale County Sheriff testified that the crime rate in Meridian is higher than the crime rate within the PAA (Tr. 1193), it certainly appears that the City's plan is actually calculated to use additional tax revenues generated by PAA residents to address the existing City's serious crime problems. This approach is far from fair or reasonable.

**5. PAA Residents Currently Receive Adequate Solid Waste Collection.**

The evidence shows that residents within the PAA have the option to receive garbage collection services provided by Lauderdale County twice a week, depending on what they are willing to pay for such services. Tr. 1054. It is both reasonable and fair to provide residents of

the PAA with such a choice. Both Mr. Herrington and Dr. Martin testified that they are satisfied with the level of service which they are currently provided by Lauderdale County. Tr. 1056, 1102-03.

**6. Septic Tank Usage Within the PAA Does Not Warrant Annexation.**

As discussed *infra*, the more populated areas in Parcel 1 are served by Eagle Pointe and Marion sewage treatment. Moreover, the City of Meridian has experienced numerous problems with its sewage treatment system in the last few years. *See* § IV(C) above. It is clear from this testimony that the City cannot offer a solution to any health problems posed by the usage of septic tanks in the area. Finally, the Chancellor heard testimony that the health department has neither received complaints nor taken action with regard to septic tank usage in the PAA. *See* § IV(C) above.

Once again, as this Court stated in *Pearl*, 908 So. 2d at 740, "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." This holding fits the facts of the case at hand perfectly. As demonstrated above, PAA residents are satisfied with the services they are currently provided and do not need additional services. While the Chancellor noted the alleged "enhanced" services planned by Meridian in the fire and police protection areas, the evidence shows that there is no real enhancement provided by Meridian's plans. In fact, Meridian has no plans to devote additional firemen or policemen to the PAA. Meridian simply plans to use the PAA to subsidize services within the existing City. As a result, the Chancellor was manifestly wrong in his determination that this indicium supports annexation, and this determination is not supported by substantial and credible evidence.

**G. The Town of Marion Serves as a Barrier Between the PAA and Meridian.**

This Court has recognized man-made political boundaries as barriers that must be taken into consideration when addressing the reasonableness of an annexation. For example, in *Hattiesburg*, 588 So. 2d at 825, this Court agreed with the chancellor's determination that the county line separating Forrest and Lamar Counties was a natural barrier that should be considered. While there are no county lines at issue here, as discussed *infra*, Marion stands between the PAA and the corporate limits of Meridian. R. 60 (map). Meridian's Base Map demonstrates that residents of Parcel 1 currently must travel through Marion in order to get to portions of Meridian. *Id.* In addition, if the Chancellor's decision is affirmed, in order for residents of Parcel 1 to travel to Parcel 3 (and vice versa) they would have to leave Meridian, enter Marion and then re-enter Meridian. *Id.* Logistically, it is nonsensical for a City to have another municipality separating its residents. As a result, the Chancellor was manifestly wrong in his determination that "there are no natural barriers to indicate the unreasonableness of this proposed annexation", Pl. 429, and this determination is not supported by substantial and credible evidence.

**H. Meridian's Past Performance Record Is Not Satisfactory.**

This Court has repeatedly recognized the importance of this indicium in numerous opinions. In *the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Jackson*, 912 So. 2d 961 (Miss. 2005), serves as an example of the vital nature of this indicium. In that case, this Court specifically cited the city's failure to provide some promised services for eight years as a strong indicator that Jackson should not be allowed to annex. *Jackson*, 912 So. 2d at 969-70. The Comprehensive Plan adopted by Meridian in 2003 provides evidence of poor past performance analogous to that considered by this Court in *Jackson*. Page 56 of the plan recommends improving several roads that were annexed by the City in 1995.

Exhibit P-019 page 56. The list includes: Harpers Drive, Knight Parker Road, J. McWilliams Road, Walker Spur Road, Clark Road, Clayton Lake Drive, Firetower Road, and South Cook Road. Id. All of these roads, which became a part of the City eight years before the Comprehensive Plan was adopted, still lack sufficient paving or turn-arounds. Id. This is indicative of Meridian's lack of willingness and/or ability to provide services to areas which it has previously annexed and serves as a major indicator that Meridian is unprepared to take on additional responsibilities.

In addition to this glaring example of Meridian's poor past performance, the Chancellor heard testimony of several instances in which the City failed to provide services to annexed residents in a timely manner. Mr. Don Starks, a citizen whose property was annexed in 1995, testified that his street did not receive sewer services until 2001. Tr. 1240. Mr. Starks also testified that Meridian has done a poor job of maintaining ditches and grassy areas near his home. Tr. 1241. Finally, Mr. Starks testified that there have been numerous instances of homes being damaged by flooding on his street due to inadequate drainage. Tr. 1242-43. Mr. Starks is so dissatisfied with the services provided by Meridian that he characterized the provision of services by the City as "poor to non-existent." Tr. 1242. Ms. Sadie Martin testified that residents of the Sweetgum Bottom area that were annexed in 1995 did not receive City water service until approximately eight years after being annexed and that residents in the area still have not received sewer service over ten years later. Tr. 1233-34. The Chancellor also heard testimony of areas along previously annexed Willow Drive still in need of street lighting. Tr. 1337. A municipality with such a poor past performance record should not be allowed to annex additional territory.



The testimony and evidence cited above demonstrate that the Chancellor was manifestly wrong in his determination that this indicium favors annexation and that the Chancellor's determination is unsupported by substantial and credible evidence.

**I. This Annexation Would Place an Unfair Tax Burden on PAA Residents.**

As noted above, in *Columbus*, 644 So. 2d at 1172, this Court stated

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

In addition, this Court held in *Jackson*, 912 So. 2d at 970, that a court must balance the equities with regard to proposed annexations by comparing the municipality's need to expand with any adverse impact on residents of annexed areas. After applying these tests, the evidence in this case establishes that Meridian did not meet its burden of demonstrating that annexed residents will receive fair value in exchange for their tax dollars; thus, the annexation is not equitable.

The City of Meridian put on proof at trial that it will gain an estimated \$1,893,316 in excess revenue from the PAA over the five-year period following annexation. R. 47. While the City would obviously benefit from this large infusion of tax revenue, Meridian is proposing to do very little for residents of the PAA in return. In fact, as noted above, the PAA is set to suffer a net loss of police and fire protection at Meridian's hands. See § IV(F). Moreover, particularly in Parcel 1, most of the property owners already provide for themselves any municipal type services that they need, such as sewage treatment, water, and additional garbage collection. Tr. 1040, 1054, 1057. Any municipal services provided to these residents would be unneeded, of a lower quality than that which is already being received, or duplicative. While the City does propose to add some personnel and equipment, no additions are solely for the benefit of the PAA. For example, the City's plan calls for the police department to add four patrol officers that

will be assigned to areas outside of the PAA, while the plan for the fire department calls for no additional personnel and the net loss of a fire station. *See* § IV(F). The unfair disparity between the amount of taxes the City would collect as a result of the annexation and the benefit conferred to annexed residents is further evidenced by testimony from residents concerning the increased tax burden that the annexation would create. Dr. Martin testified that he would save approximately \$230 per year on fire insurance premiums as a result of the annexation, but his taxes would increase by approximately \$1600. Tr. 1058. The services promised by the City simply do not justify this large tax increase when Dr. Martin and other similarly situated PAA residents are satisfied with the services they are currently receiving, and they will not receive any substantive value in return for their tax dollars.

After reviewing the estimates of revenue increases along with the City's proposals, it is apparent that Meridian has not met its burden of proving that the annexation is fair to residents of the PAA. It is also quite apparent, based on the low level of services proposed by Meridian and the high tax burden that would be created, that this annexation would have a negative impact on residents of the PAA. This evidence demonstrates that the Chancellor was manifestly wrong in his determination that "[t]he citizens and property owners will receive substantial value for the additional costs which would be associated with being annexed by the City of Meridian", Pl. 431, and that the Chancellor's determination is not supported by substantial and credible evidence.

**J. This Annexation Would Negatively Impact the Voting Strength of a Protected Minority.**

The voting strength of a protected minority will clearly be negatively impacted if the annexation is affirmed. According to the demographic data presented by Meridian, the total population of the PAA is 1427. R. 403. Of these 1427 residents, 1205 (84.4%) are white, while only 198 (13.9%) are black. *Id.* The evidence is undisputed that the current mayor of Meridian

(who is white) defeated his opponent (who is black) in the most recent mayoral election by a total of 112 votes. Tr. 1345. In addition, Mr. Gouras testified that the last City election resulted in a majority black city council and that the African-American who completed the majority was elected by 133 votes. Tr. 1346. Mr. Gouras also testified that given the demographics of the PAA, particularly Parcel 1, which is predominantly white, combined with the fact that the area's population is expected to continue to grow, the negative impact on minority voting strength will only increase over time if this annexation is affirmed. Tr. 1345. In *Columbus*, 644 So. 2d at 1180, this Court expressed hesitation to comment on this indicium because no member of the protected minority challenged the proposed annexation. That is not the case here. The Chancellor heard testimony from Ms. Sadie Martin, an African-American citizen of the PAA, who objected to Meridian's proposed annexation due in part to the dilution of the voting strength of African-Americans in Meridian. Tr. 1231-32.

Considering the undisputed evidence that this annexation as proposed will negatively impact the voting strength of African-Americans residing in Meridian, along with the fact that an African-American resident of the PAA expressed an objection to this negative impact, it is clear that the Chancellor was manifestly wrong in his determination that annexation by Meridian is reasonable under this indicium and that this determination is not supported by substantial and credible evidence. Pl. 432. Simply put, Meridian's proposed annexation, if approved, will dilute the voting strength of a protected minority within the City of Meridian.

**K. Residents of the PAA Already Pay Their Fair Share of Taxes.**

In *Columbus*, 644 So.2d at 1180, with regard to the "fair share" indicium, this Court stated

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 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.

In addition, in *City of D'Iberville v. City of Biloxi*, 867 So. 2d 241, 259 (Miss. 2004), this Court agreed with the chancellor's determination that this indicium is neutral where PAA residents receive some benefit from their proximity to the annexing municipality, but these residents also pay taxes in the city when they do business there. The Court recognized that any benefit received is negated by the payment of city taxes by PAA residents. Such is the case here. Any benefit arguably received by PAA residents is clearly negated by the fact that PAA residents contribute taxes to Meridian when they do business there and by the fact that PAA residents pay the county taxes that they are required to pay.

Furthermore, it is undisputed that citizens of the PAA have contributed greatly to the City of Meridian. By way of example, Mr. Gibson, a resident of the PAA, owns a construction business within the Central Industrial Park that employs numerous Meridian area residents who contribute tax dollars to the City. Tr. 1042. Before his retirement, Mr. Albert Herrington, a resident of the PAA, owned a multi-million dollar company located in Meridian. Tr. 1107-08. Mr. Herrington's company employed around 150 individuals in the Meridian area. Id. Ms. Sadie Martin, a resident of the PAA, is a vocational instructor at East Mississippi State Hospital in Meridian. Tr. 1224. Dr. Martin, a resident of the PAA, served the City as a physician at Rush Hospital for twenty two years before his retirement. Tr. 1037. The contributions that these individuals have made and continue to make to Meridian are indicative of the contributions made by numerous residents of the PAA. These contributions clearly outweigh any advantage that PAA residents have received or will receive from Meridian.

Even without using the reasoning employed by this Court in *Columbus*, the evidence presented at trial clearly indicates that the residents and property owners in the PAA do not and will not benefit unfairly by their proximity to the City. In addition, it is apparent that these residents have paid and will continue to pay their fair share of taxes to Meridian. It is

noteworthy that many PAA residents, particularly residents of Parcel 1, have higher disposable incomes than the average Meridian resident. Therefore, Mr. Gouras testified that it is reasonable to conclude that these residents spend more than their fair share of money in Meridian and generate more than their fair share of taxes and other revenue for the City. Tr. 1349-50.

Based on the above factors, the Chancellor was manifestly wrong in his determination that this indicium weighs in favor of annexation by Meridian, and this determination is not supported by substantial and credible evidence.

**L. Numerous Other Factors Show That Annexation by Meridian Is Not Reasonable Under the Totality of the Circumstances.**

In *Jackson*, 691 So. 2d at 980, this Court stated that while the ultimate focus with regard to an annexation is reasonableness, an annexation cannot be reasonable unless it is fair. As such, the annexation must be viewed from the perspective of the city and from the perspective of residents and landowners in the PAA. *Id.* In addition, in *In re Extension and Enlarging of the Boundaries of the City of Laurel*, 922 So. 2d 791, 800-01 (Miss. 2006), this Court recognized that the will of the citizenry within the PAA is a factor that should be considered when determining the reasonableness of an annexation.

In the case at hand, witness testimony at trial clearly indicated that from the perspective of PAA residents, this annexation is unwanted and will provide very little in the way of value. Every PAA resident that testified opposes Meridian's annexation attempt. Dr. Martin, speaking as the representative of Citizens Against Annexation, testified that the group opposes annexation because there is "nothing in it" for the citizens that would be annexed. Tr. 1057. Furthermore, Dr. Martin testified that the citizens of the area do not need annexation. *Id.* Mr. Herrington testified that there are no services that the City can provide to PAA residents that they do not have and that he has no desire to be annexed by Meridian. Tr. 1103, 1105. Ms. Martin testified that there is no need for residents of her area to be a part of the City and that the City has nothing

to offer. Tr. 1227-28. In addition, Ms. Martin expressed her concern that low income residents of the PAA do not have the financial means to shoulder the additional tax burden that would accompany annexation. Tr. 1228. These comments demonstrate the overwhelming opposition to this annexation. Furthermore, this opposition demonstrates that this annexation is, simply put, unfair.

In addition to the will of PAA residents, this Court has recognized in the past that any detriment to a neighboring municipality must be taken into account when considering the reasonableness of an annexation. In *Madison*, 650 So. 2d at 507 (citing *City of Jackson v. City of Ridgeland*, 551 So. 2d 861, 868 (Miss. 1989)) (concluding that Jackson's path of growth must be preserved and the city must not become landlocked by neighboring municipalities), this Court held that any detriment to Jackson must be given great weight under the "other indicia" factor. The reasoning employed by the Court in that case is on point here. As discussed *infra*, expert testimony presented to the Chancellor revealed that while this annexation is not vital to Meridian's future, the annexation would be extremely detrimental to Marion. Tr. 1351. As depicted by Meridian's Base Map, this annexation would block Marion's path of growth to the west, northwest, and south. R. 60 (map). The trial court approved the vast majority of Meridian's proposed annexation which effectively surrounds and landlocks the Town of Marion. If this decision is affirmed, Marion will have little room left for future growth.

As a result of these "other factors" weighing against this annexation, the Chancellor was manifestly wrong in his determination that there are no "other factors" that should be considered, Pl. 433, and this determination is not supported by substantial and credible evidence.

## **V. CONCLUSION**

After considering the indicia of reasonableness, the testimony and evidence introduced at trial, and applicable law, it is apparent that the Chancellor incorrectly determined that annexation

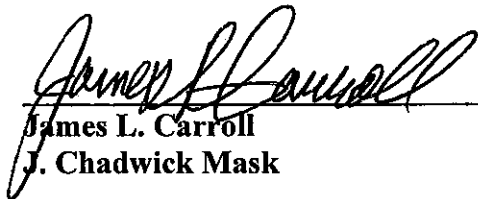
of the PAA by Meridian is reasonable and should be approved. The Chancellor was manifestly wrong in granting the PAA to Meridian, and his decision is not supported by substantial and credible evidence. As a result, this Court should reverse the Court below and hold that annexation by Meridian of any portion of the PAA is not reasonable and should not have been approved.

**Respectfully Submitted this the 19th day of March, 2007.**

**LAUDERDALE COUNTY, MISSISSIPPI**

**BY: CARROLL WARREN & PARKER PLLC**

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### CERTIFICATE OF SERVICE

I, J. Chadwick Mask, Attorney for Lauderdale County, Mississippi, do hereby certify that I have this day hand delivered, or deposited in the United States mail, postage prepaid and correctly addressed, copies of the foregoing Brief of the Appellant, Lauderdale County, Mississippi as follows:

- (1) An original and three (3) copies of the Brief have been filed with the Mississippi Supreme Court by **hand delivery** of the same to:

Supreme Court of Mississippi  
Court of Appeals of the State of Mississippi  
Betty W. Sephton  
Office of the Clerk  
450 High Street  
Jackson, Mississippi 39201-1082

- (2) A copy of the Brief has been served by United States Mail, first class postage prepaid to the following:

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This the 19<sup>th</sup> day of March, 2007.

  
James L. Carren



**MISSISSIPPI CODE ANNOTATED § 21-1-33**

If the chancellor finds from the evidence presented at such hearing that the proposed enlargement or contraction is reasonable and is required by the public convenience and necessity and, in the event of an enlargement of a municipality, that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time, the chancellor shall enter a decree approving, ratifying and confirming the proposed enlargement or contraction, and describing the boundaries of the municipality as altered. In so doing the chancellor shall have the right and the power to modify the proposed enlargement or contraction by decreasing the territory to be included in or excluded from such municipality, as the case may be. If the chancellor shall find from the evidence that the proposed enlargement or contraction, as the case may be, is unreasonable and is not required by the public convenience and necessity, then he shall enter a decree denying such enlargement or contraction. In any event, the decree of the chancellor shall become effective after the passage of ten days from the date thereof or, in event an appeal is taken therefrom, within ten days from the final determination of such appeal. In any proceeding under this section the burden shall be upon the municipal authorities to show that the proposed enlargement or contraction is reasonable.