

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2006-AN-01574

IN THE MATTER OF THE ENLARGEMENT
AND EXTENSION OF THE CORPORATE
LIMITS OF THE CITY OF MADISON

RONALD RUSSELL, KELLY KERSH,
CHARLES WARWICK, TOM JOHNSON,
RICHARD DAVIS, HARLAN SISTRUNK,
and FRANK BELL

APPELLANTS-CROSS-APPELLEES

V.

CITY OF MADISON, MISSISSIPPI

APPELLEE-CROSS-APPELLANT

Brief

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the City of Madison hereby certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. The City of Madison, Mississippi, Appellee-Cross-Appellant;
2. James L. Carroll, Myles A. Parker, Melissa A. Rose, and the law firm of Carroll Warren & Parker PLLC, Attorneys for the City of Madison, Mississippi;
3. C. John Hedglin, Attorney for the City of Madison, Mississippi;
4. Mr. Ronald Russell, Ms. Kelly Kersh, Mr. Charles Warwick, Mr. Tom Johnson, Mr. Richard Davis, Mr. Harlan Sistrunk, and Mr. Frank Bell, Objectors;
5. T. Jackson Lyons and the law firm of T. Jackson Lyons & Associates, P.A., Attorneys for Objectors.

SO CERTIFIED, this the 15th day of June, 2007.



JAMES L. CARROLL,
Attorney of record for
City of Madison, Mississippi

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
<u>BRIEF OF APPELLEES</u>	
MAP DEPICTING AREAS INVOLVED IN APPEAL/CROSS-APPEAL	1
INTRODUCTION	2
STATEMENT OF THE ISSUE	2
STATEMENT OF THE CASE	2
Statement of Facts.....	2
Statement of the Law	4
SUMMARY OF THE ARGUMENT	6
ARGUMENT	6
<u>BRIEF OF CROSS-APPELLANT</u>	
STATEMENT OF THE ISSUE.....	42
SUMMARY OF THE ARGUMENT	42
ARGUMENT.....	42
CONCLUSION.....	48
CERTIFICATE OF SERVICE	50

TABLE OF AUTHORITIES

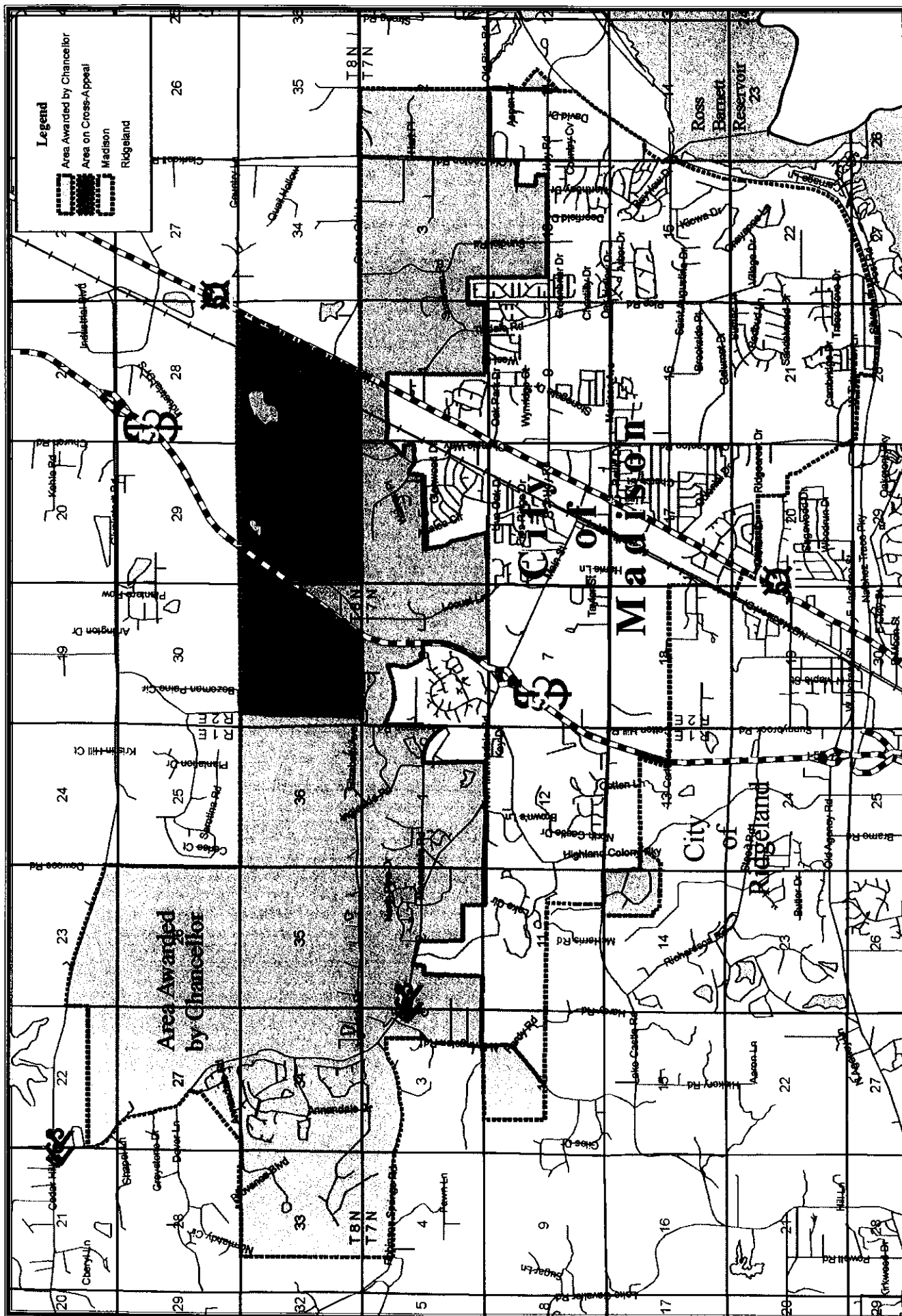
CASES:

<i>Bassett v. Town of Taylorsville</i> , 542 So. 2d 918 (Miss. 1989)	4,5,38
<i>City of Picayune v. Quick and Grice, Inc.</i> , 238 Miss. 429, 117 So. 2d 718 (1960).....	5
<i>Dodd v. City of Jackson</i> , 238 Miss. 372, 118 So. 2d 319 (1960).....	11,45,46,47
<i>Enlargement and Extension of Boundaries of City of Macon</i> , 854 So. 2d 1029 (Miss. 2003)	10,44
<i>Biloxi II - Enlargement and Extension of Municipal Boundaries of City of Biloxi</i> , 744 So. 2d 270 (Miss. 1999)	5,17,24,33,43,47
<i>Enlargement and Extension of Municipal Boundaries of City of Clinton</i> , 955 So. 2d 307 (Miss. 2007)	37
<i>Enlargement and Extension of Municipal Boundaries of City of Madison v. City of Madison</i> , 650 So. 2d 490 (Miss. 1995)	4,5,9,24,31
<i>Enlargement and Extension of Municipal Boundaries of City of Meridian v. City of Meridian</i> , 662 So. 2d 597 (Miss. 1995)	5
<i>Enlarging, Extending and Defining Corporate Limits of City of Brookhaven</i> , No. 2004-AN-01641-SCT, 2007 WL 1017800 (Miss. April 5, 2007)	9
<i>Biloxi I - Extension of Boundaries of City of Biloxi v. City of Biloxi</i> , 361 So. 2d 1372 (Miss. 1978)	5
<i>Hattiesburg II - Extension of Boundaries of City of Hattiesburg</i> , 840 So. 2d 69 (Miss. 2003)	4,12,14,19,24,31,33
<i>Extension of Boundaries of City of Ridgeland v. City of Ridgeland</i> , 651 So. 2d 548 (Miss. 1995)	12,17,19
<i>Extension of Boundaries of City of Vicksburg</i> , 560 So. 2d 713 (Miss. 1990)	4
<i>Extension of Boundaries of City of Winona</i> , 879 So. 2d 966 (Miss. 2004)	6,13,14,17,25,42

<i>Extension of Corporate Boundaries of Town of Mantachie,</i> 685 So. 2d 724 (Miss. 1996)	17
<i>Forbes v. City of Meridian,</i> 86 Miss. 243, 38 So. 676 (1905)	13
<i>In re City of Jackson,</i> 912 So. 2d 961 (Miss. 2005)	44
<i>Matter of City of Horn Lake,</i> 630 So. 2d 10 (Miss. 1993)	13,17,24
<i>Hattiesburg I - Matter of Enlargement of Corporate Limits of City of Hattiesburg,</i> 588 So. 2d 814 (Miss. 1991)	5,46
<i>Matter of Extension of Boundaries of City of Columbus,</i> 644 So. 2d 1168 (Miss. 1994)	12,36
<i>McElhaney v. City of Horn Lake,</i> 501 So. 2d 401 (Miss. 1987)	5

STATUTES AND OTHER AUTHORITIES:

Miss. Code Ann. § 21-1-1 et seq.	3
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**SLAUGHTER &
ASSOCIATES, PLLC**
URBAN PLANNING CONSULTANTS

Map Depicting Areas Involved In Appeal/Cross-Appeal City of Madison, Mississippi



This map is accurate for planning purposes only.

I. INTRODUCTION

The map on Page 1 shows the City of Madison, the territory that was approved by the Special Chancellor for annexation, and the 2.5 square miles immediately to the north of the existing City that was not approved. The evidence was virtually undisputed that the entire area sought to be annexed was reasonable for annexation. Madison respectfully submits that the evidence in favor of annexation was overwhelming and that the portion of the decision allowing annexation should be affirmed. The other issue for consideration by this Court is whether that portion of the decision excluding the 2.5 square miles immediately to the City of Madison's north and lying directly between the City of Madison and the Nissan plant is contrary to all of the evidence and should be reversed because it is manifestly wrong and not supported by substantial credible evidence.

II. STATEMENT OF THE ISSUE

Whether the decision of the Chancellor to approve the majority of Madison's annexation, applying the twelve indicia of reasonableness as set out by this Court, was manifestly wrong and not supported by substantial credible evidence.

III. STATEMENT OF THE CASE

A. Statement of Facts

This appeal is from the Madison County Chancery Court's decision granting in part a Petition by the City of Madison for approval of the enlargement and extension of its municipal boundaries.

On November 16, 2005, an Ordinance expanding the boundaries of the City of Madison was unanimously and lawfully adopted by the Mayor and Board of Aldermen of the City of

Madison. C.P. 401-55; M.E. 123, 124.¹ The Ordinance included a valid legal description of the proposed annexation area (“PAA”) as well as the boundaries of the entire City as they would exist after annexation. The City of Madison’s November 16, 2005 Second Amended Annexation Ordinance superseded all former Annexation Ordinances pertaining to this annexation effort and is thus the City’s legally controlling municipal Ordinance.

The Madison County Chancery Court found that the City of Madison had complied with all of the statutory jurisdictional requirements set forth in Miss. Code Ann. §§ 21-1-1, *et seq.* regarding the commencement of annexation proceedings and that the court had jurisdiction to hear the matter.

The City of Madison’s Petition reflects that it seeks to annex a total of approximately 15.70 square miles of land comprised of sixteen parcels, the land being located primarily to the north and northwest of the current city limits, and also to its west, southwest, and east. C.P. 401-55; M.E. 123, 125.

After a trial lasting twelve days, from January 9, 2006 to January 26, 2006, the Madison County Chancery Court, Special Chancellor Jason H. Floyd, Jr., presiding, took the case under advisement, and received Proposed Findings of Fact and Conclusions of Law from the parties. On August 8, 2006, the Special Chancellor approved all of Madison’s proposed annexation, with the exception of a small area to the southwest of the current city and an approximately 2.5 square mile area to the north of the current City. C.P. 671-94. The Final Judgment approving Madison’s annexation was entered on September 5, 2006. C.P. 695-733.

¹ For purposes of this brief, citations to the portion of the record containing the transcript of the Chancery Court hearing will be cited as “T. 1, T. 2,” etc. Citations to exhibits presented by the City of Madison will be cited as “M.E. 1, M.E. 2,” etc. and citations to exhibits presented by the Objectors will be cited as “O.E. 1, O.E. 2,” etc. Citations to record excerpts filed by the Objectors pursuant to Miss. R. App. P. 30 as well as any other citation to trial court pleadings will be cited as “C.P. 1, C.P. 2,” etc.

The Objectors filed their notice of appeal on September 15, 2006 and, on the same day, the City of Madison appealed the Chancery Court's decision to disallow the annexation of the area to the north of the current City. C.P. 736-37, 741-43, 748-50.

B. Statement of the Law

I. Reasonableness

This Court has stated that "annexation is a legislative affair." *Enlargement and Extension of Municipal Boundaries of City of Madison*, 650 So. 2d 490, 494 (Miss. 1995) ("*Madison*"). The "role of the judiciary in annexation is limited to one question: whether the annexation is reasonable." *Id.* If, under the totality of the circumstances, taking into account the twelve indicia of reasonableness set out in earlier precedent, this Court determines that the annexation is reasonable, it must be approved. *Extension of Boundaries of City of Hattiesburg*, 840 So. 2d 69, 81-82 (Miss. 2003) ("*Hattiesburg II*"); *Extension of Boundaries of City of Vicksburg*, 560 So. 2d 713, 716 (Miss. 1990) ("*Vicksburg*"); *Bassett v. Town of Taylorsville*, 542 So. 2d 918, 921 (Miss. 1989) ("*Taylorsville*").

The twelve "indicia of reasonableness" that the courts of this state are to 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 to expand; (2) whether the area sought to be annexed is reasonably 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 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 annexed area; (8) the 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 area sought to be annexed have in the past, and will in the future unless annexed, because of their reasonable proximity to the corporate limits of the municipality, enjoy economic and social benefits of the municipality without paying their fair share of taxes; and (12) any other factors that may suggest reasonableness. *Enlargement and Extension of Municipal Boundaries of City of Biloxi*, 744 So. 2d 270, 278 (Miss. 1999) (“*Biloxi II*”); *Enlargement and Extension of Municipal Boundaries of City of Meridian*, 662 So. 2d 597, 608 (Miss. 1995) (“*Meridian*”); *Madison*, 650 So. 2d at 494.

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.” *Matter of Enlargement of Corporate Limits of City of Hattiesburg*, 588 So. 2d 814, 819 (Miss. 1991) (“*Hattiesburg I*”). “If there is credible, albeit conflicting² evidence, this Court will defer to the Chancery Court's findings.” *Id.* (citing *Tylorsville*, 542 So.2d at 921). “In the context of conflicting evidence, this Court will not disturb a lower court ruling unless it can be said that from all the evidence such findings are manifestly wrong.” *Id.* at 819 (citing *Tylorsville*, 542 So.2d at 921); *McElhaney v. City of Horn Lake*, 501 So.2d 401, 403 (Miss.1987) (“*McElhaney*”); *Extension of Boundaries of City of Biloxi v. City of Biloxi*, 361 So.2d 1372, 1376 (Miss.1978) (“*Biloxi I*”); *City of Picayune v. Quick and Grice, Inc.*, 238 Miss. 429, 117 So.2d 718 (1960) (“*Picayune*”).

² This Court’s “conflicting evidence” standard is essential on Madison’s Cross-Appeal in this case.

IV. SUMMARY OF THE ARGUMENT

As the evidence in the underlying case demonstrates and, even as the Objectors have documented in their principal appellate brief, the twelve indicia of reasonableness weigh heavily in favor of annexation by the City of Madison. The City is a fiscally healthy municipality which has experienced and continues to experience explosive and significant growth within its city limits as well as spillover development into the PAA. The City of Madison has demonstrated that its department heads are knowledgeable about what it takes to successfully run a city and, consequently, have been able to provide a high level of municipal services to its citizens. The City of Madison has further demonstrated that it can and will provide the same high level of services to the citizens of the PAA upon annexation. During the trial of this matter, residents, property owners, and land developers expressed a desire to become a part of the City of Madison in order to enjoy the benefits of being a part of this unique and thriving City.

The Chancellor correctly determined that it is reasonable for the City of Madison to annex. Despite argument to the contrary by the Objectors, there is simply no evidence indicating that the Chancellor's ruling with regard to the area approved for annexation was in error.

V. ARGUMENT

A. The City of Madison Has Demonstrated a Need to Expand.

This Court has previously outlined several factors that should be considered in determining whether a municipality has a need for expansion. The factors include:

(1) spillover development into the proposed annexation area; (2) the City's internal growth; (3) the City's population growth; (4) the City's need for developable land; (5) the need for planning in the annexation area; (6) increased traffic counts; (7) the need to maintain and expand the City's tax base; (8) limitations due to geography and surrounding cities; (9) remaining vacant land within the municipality; (10) environmental influences; (11) the city's need to exercise control over the proposed annexation area; and (12) increased new building permit activity.

Extension of Boundaries of City of Winona, 879 So. 2d 966, 974 (Miss. 2004) ("*Winona*").

The City of Madison's Population Growth, Internal Growth, and Spillover Development into the PAA

The Chancellor correctly determined that the City of Madison has seen significant growth in its population over the past several years. C.P. 673; T. 52, 222; M.E. 018, 082, 083.

Here is what the undisputed evidence demonstrated:

In only four years, from 2000 to 2004, the total population of the City increased by 16.4%, from 14,692 to 16,462. M.E. 018; T. 1242-43. Prior to that, the City's population almost doubled between 1990 and 2000, increasing from 7,471 to 14,692. During this same time period, the City of Madison only increased its land area by 23.9% while experiencing an astounding 96.7% increase in population. As a result, during the period, there was a 58.8% increase in the "person per square mile ratio," making the City of Madison one of the most densely populated cities in the state. Ridgeland, for example, has experienced a 17% increase in its density ratio during this same time period. M.E. 084. According to the most recent Census Bureau data, the City of Madison is continuing to develop, and population density has increased significantly since 2004. T. 1251. In addition, the population of the PAA more than tripled from 1990 to 2000, increasing from 1,225 to 4,064-- a 231.8% increase. M.E. 083.

The City of Madison has experienced unprecedented residential and commercial growth, and consequently businesses want to come to Madison. T. 53, 222; M.E. 059, 060. At the time of trial, there were 70 commercial, residential, and recreational development plans within the City of Madison and just outside the city limits in the PAA. Of those development plans, 43 were within the City of Madison and 27 were in the PAA. T. 771; M.E. 019, 020.

It is clear that the City of Madison is experiencing spillover development into the PAA. There is a severe lack of vacant developable land within the city limits of the City of Madison and that is forcing development to occur outside of the City. T. 1257. Many of the large developments in the PAA, such as the Reunion, Galleria, and Fontanelle subdivisions, would be

impossible to build inside the City, simply due to the lack of land. T. 1256-57. Developers of land in the PAA, who are also supporters of this annexation, acknowledge the benefits that come from the proximity to the City of Madison and anticipate that the properties will thrive and increase in value because of the locale. T. 629-30, 849-50, 950, 1186. Even the Objectors' hired planning expert admitted at the trial of this matter that most of the PAA consisted of spillover development from the City of Madison. T. 1198-1231; O.E. 073.

The City of Madison's Need for Developable Land and Lack of Vacant Land Within the Municipality; Limitations Due to Geography and Surrounding Cities

Commercial development has caused an increased demand for commercial land in the City of Madison, where such land is scarce. This boom in commercial development is expected to continue. T. 778-79. The City must expand in order to accommodate the influx of development and in order to continue its commercial growth.

The City has demonstrated that it is in need of vacant, developable land. T. 1271. Currently, 67.9% of the City of Madison is totally developed. M.E. 108; T. 1270. The Objectors question why a city having "only" two-thirds of its territory built out should be allowed to expand. However, as evidence at the trial of this matter demonstrated, of the City's total land area of 8,640 acres, only 1,275 acres (14.8%) is vacant, unconstrained developable land. Based on the average land absorption rate from March 1993 to June 2005 (149.5 acres per year), the City of Madison will be 100% built out in only 8.5 years if it does not annex. M.E. 040.

The City of Madison's ability to physically expand is severely limited by the City of Ridgeland to the south and the Ross Barnett Reservoir to the east. M.E. 019, 020.

Mike Slaughter, an expert in the fields of civil engineering, urban planning and municipal finance, testified that the City of Madison has clearly demonstrated a need to expand its municipal boundaries. T. 1241, 1271. Alan Hoops, the City's Director of Community Development and an expert in the fields of community development, zoning and planning also

offered testimony that supports the City of Madison's need to expand. T. 778-79. The City of Madison's Mayor, Mary Hawkins Butler, further testified about the tremendous amount of past and ongoing growth and development in the community, both necessitating expansion of the City. T. 92-93.

In their principal brief, the Objectors argue that the population density of the PAA does not qualify as "urban" pursuant to the Census Bureau definition and cites a North Carolina annexation statute. This Court rejected that identical argument in April 2007. A Citizens Against Annexation ("CAA") group made the argument in the case of *Enlarging, Extending, and Defining the Corporate Limits of Brookhaven*, 2007 WL 1017800, No. 2004-AN-01641-SCT (Miss. April 5, 2007) ("*Brookhaven*"). There, the CAA argued on appeal that Mississippi should "adopt a new guideline requiring cities to quantify the degree of purported urbanization within a territory proposed to be annexed when, as here, a large area of vacant, timber, and agricultural land is included within the area desired to be annexed." *Id.* at ¶ 37. This Court specifically rejected the invitation to adopt such a standard. *Id.* at ¶ 38. This Court held that "[w]hile the Legislature of North Carolina saw fit to adopt specific annexation guidelines, we will remain committed in our attempt to ascertain if the annexation is reasonable." *Id.* at ¶ 39. This Court reiterated that it does not look at just one factor, such as the "urbanization" of the PAA, in order to make the determination of whether or not an annexation is reasonable. The twelve indicia of reasonableness "need not be met factor by factor, but must be viewed through the lens of totality." *Id.* at ¶ 5 (citing *Madison*, 650 So. 2d at 494).

Moreover, Mr. Slaughter testified at trial that there are areas of the PAA that are already urbanized, and which contain numerous commercial developments as well as densely developed subdivisions. T. 1252, 1425-26. The overall character of the PAA is that of an area that is continuing to urbanize: Those lands that are vacant are continuing to develop. T. 1252. A

specific goal of the City of Madison was to annex vacant land to accommodate future growth, a goal repeatedly lauded by this Court in its annexation decisions. *See, e.g., Enlargement and Extension of Boundaries of City of Macon*, 854 So. 2d 1029, 1036 (Miss. 2003) (“*Macon*”) (noting that vacant and unconstrained land was necessary to accommodate the future growth of Macon).

The City of Madison’s Increased Building Permit Activity and Traffic Counts

From 1996 through 2005, 214 commercial building permits and 1900 residential building permits were issued by the City of Madison.³ T. 1273-74; M.E.010, 011, 012, 013. In 2005, the City of Madison issued 57 commercial permits, the most issued in a single year since at least 1991. T. 778. During the period from 2000 to 2002, a total of 23 commercial building permits were issued, as compared to 112 from 2003 to 2005. M.E. 011, 012, 013.

Another indicator of the explosive residential and commercial growth in Madison is the significant traffic increase in both the City and in the PAA. From 1990 to 2004, the traffic on Main Street in the City of Madison increased by 171.3%. During that same time period, traffic on Highway 463 (in the PAA) increased by 319.4%. M.E. 107. Many of the City’s main roads are currently being widened and upgraded in order to accommodate the increased volume of traffic each day.

Need for Planning and Zoning and Exercise of Control Over the PAA

Alan Hoops, Director of Community Development and Interim Director of the Building Permits Department and Code Enforcement for the City of Madison, has been actively involved in the design review, preliminary plat, and layout of both residential subdivisions and

³ The data on City of Madison Exhibits 010, 012, and 013 reflects that there were 100 residential building permits issued between January and August 2005. At trial, Slaughter testified that an additional 70 residential permits were issued through December of 2005. The data on City of Madison Exhibits 010, 011, and 013 reflects that there were 37 commercial building permits issued between January and August 2005. At trial, Mr. Hoops testified that an additional 20 commercial permits were issued through December of 2005.

commercial development projects in the PAA. T. 772. He and the City's other department heads work extensively with the developers, landscape architects, engineers, and planners for new developments in order to ensure consistency, quality design, and quality development outside the city limits in the PAA. T. 773. However, the areas being developed are still not subject to the enforcement of the City of Madison's codes and ordinances, a situation which will, over time, be to the City's detriment if the area is not annexed. Madison should have the opportunity to exert control over the extensive development along its periphery by enforcing its own codes and ordinances in the PAA. This will eliminate any potential for the area developing in a substandard manner and will ensure that it develops to municipal level standards to protect the health, safety and welfare of the general public.

There is currently minimal control by Madison over development in the PAA; the area is, and in the future will be, in need of municipal-level zoning and overall planning. T. 1241, 1346. As the Objectors admit in their brief, "[t]here is much merit in the theory of overall planning, namely, where it can be reasonably anticipated that a certain area will become a part of the city in a reasonable time, it is better to take it in and develop the same properly and wisely . . . rather than to let the area develop in a harum-scarum manner as each builder or developer may determine." *Dodd v. City of Jackson*, 238 Miss. 372, 118 So. 2d 319, 330 (1960) ("*Dodd*").

Madison's zoning and other related ordinances are clearly more comprehensive than the County's and Madison has, over the years, demonstrated its desire and ability to effectively implement and enforce them. T. 779-81; M.E. 114, 115. In addition to its Zoning Ordinance, Madison has a well-designed Landscape Ordinance, a comprehensive Sign Ordinance, and modern Subdivision Development Regulations, all of which are strictly enforced by the City. M.E. 042, 099, 102; T. 766, 782-90. Madison also has a separate Stormwater Management Ordinance, the enforcement of which ensures that properties downstream from developments

will not be flooded by the increased stormwater runoff. T. 787-88; M.E. 100. All of these ordinances and regulations, as well as the strict enforcement of their terms by the City, contribute to the overall high quality of the development that has occurred in Madison. T. 786, 790. In order to ensure that the same quality of development occurs in the quickly developing PAA, Madison must expand into that area and fully implement its codes and ordinances.

Environmental Influences

The methods of sewage and trash disposal that are currently used in the annexation area, including poorly functioning septic tanks and the illegal dumping of waste, pose significant potential health hazards to citizens of both Madison and the PAA. M.E. 035, 036; T. 657, 665, 670, 676. There is a need for the City to expand and exert control over the method of waste disposal in the PAA so that such hazards in the area may be eliminated and the citizens of both the PAA and Madison may be protected from any residual harm. The City has demonstrated its ability to provide such sewer and waste disposal improvements. M.E. 093.

In 1995, this Court, in concluding that the City of Ridgeland had a need to expand, relied on supporting evidence which included expert testimony on population growth, increased new building permit activity, lack of available land to meet increasing development and the need to expand Ridgeland's borders so that it could exercise control over development and provide comprehensive planning for growth. *Extension of Boundaries of City of Ridgeland v. City of Ridgeland*, 651 So. 2d 548, 553-56 (Miss. 1995) ("*Ridgeland*"). This Court, in *Hattiesburg*, found that the PAA had been "developing without city entanglements and lacked regional planning." *Hattiesburg II*, 840 So. 2d at 84. This Court noted that "haphazard growth, the lack of infrastructure, and the lack of building codes [was] not in the best interests of future owners and residents of the area." *Id.* In *Matter of Extension of Boundaries of City of Columbus*, 644 So. 2d 1168, 1173 (Miss. 1994) ("*Columbus*"), this Court found that Columbus needed to expand based in part on the opinions of civic leaders who

testified that most developable land within Columbus had already been utilized. In *Matter of City of Horn Lake*, 630 So. 2d 10, 17-18 (Miss. 1993) (“*Horn Lake*”), this Court found that Southaven needed to expand in part due to the rapid rate of growth of the city.

The Objectors also argue that the City has no need to extend its tax base and that this Court has been critical of “tax grabs.” In citing *Forbes v. City of Meridian*, 86 Miss. 243, 38 So. 676, 678 (Miss. 1905) (“*Forbes*”), the Objectors point out that corporate limits should not be extended for the purpose alone of increasing the income of the municipality. What the Objectors decided not to point out is that this Court went on in the same opinion to state how the increased tax revenue should be spent by an annexing city:

The power of extending corporate limits is granted . . . in order that the benefits incident to civic government may be extended to those residents in the territory adjacent to the municipality and included in the extension; and, further, that the municipality by extending its police government, its sanitary and quarantine regulations, and its more adequate fire protection, may thereby conserve the best interests of the inhabitants within its original borders, and also give to those living in the territory included in the extension more efficient protection against devastation by fire, and by the enforcement of necessary sanitary regulations to the public health decrease the danger from disease and pestilence.

Id. As Madison demonstrated at the trial of this matter and as the Chancellor determined, the increase in tax revenue will be used to provide municipal-level services to the PAA.

As established by the above-referenced evidence, Madison has clearly demonstrated a need for expansion based upon the factors of the path of growth indicium as set out by the *Winona* Court.

B. The Proposed Annexation Area is in the City of Madison’s Path of Growth.

In *Winona*, this Court also outlined several factors to consider in determining whether a proposed annexation area is within a municipality’s path of growth: (1) spillover development in annexation area; (2) the adjacency of the proposed annexation area to the city; (3) limited area available for expansion; (4) interconnection by transportation corridors; (5) increased urban development in annexation area; (6) geography; and (7) subdivision development. *Winona*, 879 So.

2d at 977. The court concluded that the proposed annexation area was within Winona's path of growth based on several of these factors, including evidence that the proposed annexation area was immediately adjacent to Winona, was accessible by in-use public streets, highways and roads, was experiencing spillover of urban development from Winona, and was prime for commercial development. *Id.*, 879 So. 2d at 977-78. This Court has also recognized the extension of municipal services as an indicator of a city's path of growth. *Hattiesburg II*, 840 So. 2d at 86-87.

As the map depicting Madison and the PAA in their entirety demonstrates (M.E. 005), the PAA lies within Madison's path of growth. T. 1290. It is immediately adjacent to Madison, is accessible by in-use public streets, highways, and roads, and is experiencing significant spillover of urban development in the contiguous area around the periphery of the City. M.E. 005; T. 1256-61.

Adjacency and Interconnection by Transportation Corridors

The borders of the PAA are fully contiguous with the current municipal borders of the City, a factor which shows that expansion into the area is a logical and natural extension of the City. M.E. 005. Despite the Objectors' contentions that the parcels west of Interstate 55 are not within Madison's path of growth, the evidence presented at the trial of this matter demonstrates otherwise. Mississippi Highway 463 runs directly from Madison's downtown area right through the heart of the City's rapidly developing commercial areas at Interstate 55 and into the PAA past the Reunion development. Residential subdivisions such as Annandale, Ingleside, Twelve Oaks, and Windsor Hills are on both sides of Highway 463 and are directly connected to it. The City has previously annexed land in the area west of Interstate 55 in 1974, 1979, 1981, and 1995. M.E. 002; T. 1435-36. In addition, the PAA is located totally within Madison's planning area, as set out in its 2004 Comprehensive Plan. M.E. 017. A thorough study of the growth and

direction of the City has been conducted and it was concluded that this area lies within Madison's path of growth and is a logical extension of the current city limits.

One of the most compelling indicators that the PAA is in Madison's path of growth is that Madison's roads and streets extend into the PAA. One of the major and highly traveled roads in the area, both in Madison and its extension into the PAA, is Highway 463 leading to the west. Lake Castle Road, which becomes Madison Avenue on the east side of Interstate 55, is also a very significant east-west corridor, extending through both the PAA and the City. Highland Colony Parkway, which turns into Bozeman Road at Highway 463 and goes north is another primary transportation corridor. M.E. 073; T. 1291-92, 1299. Other main arteries extending from Madison into the PAA include U.S. Highway 51, which runs through the northeastern portion of Madison; Hoy Road, which runs east and west; and Langston Road, which is located in the western portion of the City and extends east into the PAA. M.E. 073. In addition, Bozeman Road, running north and south, connects Madison to Reunion Parkway. This newly constructed road is currently being extended by the County and will likely connect to Highway 463 in the next 18 to 24 months. There are plans to extend Reunion Parkway to a proposed new interchange at Interstate 55, and continue the extension of the road east of the interstate and ultimately tie into US Highway 51. T. 1581. Once construction is completed, the Galleria Parkway (Parkway East), which initiates inside Madison and extends into the PAA, will serve as a tie-in from Highway 463 up to Weisenberger Road, south of Gluckstadt Road which, in turn, ties into Interstate 55. M.E. 019; T. 1255. In summary, the PAA is tied into Madison by numerous transportation corridors extending in nearly every direction.

Spillover and Increased Urban Development in the PAA

Madison has been experiencing significant spillover development along its periphery, especially in the last several years. The level of construction and subdivision development is

further evidence of the increased urban development in the PAA, an area which has already taken on the characteristics of a municipality. There are several existing subdivisions, as well as commercial and residential developments under construction, that are situated partially in the PAA and partially in the City. M.E. 019, 020, 071, 072, 073, 103, 104, 049, 050; T. 1290.

The City already provides a significant portion of the PAA with municipal services, including fire, police, and other emergency response. M.E. 030, 031, 080, 081. Madison also provides sewer service to a vast majority of the PAA, including Annandale, Fairfield, Reunion, Reserve, Windsor Hills, Ashton Park, Countryside Plantation, and Klaas Plantation subdivisions. T. 994-97; M.E. 004, 019, 063, 085, 092. In addition, curbs, gutters, pavement, fire hydrants, sewer lines, and drainage infrastructure have been, and currently are being, installed in the PAA. M.E. 019; T. 1253.

The traffic count along Highway 463 near the PAA- Madison border increased by 75.8% from 1998 to 2004. On Old Mannsdale Road, near the intersection of Old Mannsdale and Highway 463, the traffic count increased by 909.2% from 1990 to 2004. M.E. 107. In addition, the highway department has recognized the increased traffic and movement along Highway 51, a major corridor into the PAA, by expanding this road from two to five lanes. T. 1258, 1295; M.E. 073. This significant traffic increase, along with the commercial and residential development activity spilling over from the City into the PAA, demonstrates that the PAA is clearly within Madison's path of growth.

Limited Available Area for Expansion

The City's paths of growth have been shown to be primarily to the north and to the west of the existing city limits. T. 1287; M.E. 073, 005. The City's paths of growth are restricted to the east by the Ross Barnett Reservoir, to the north by the City of Canton, and to the south by the City of Ridgeland. T. 1285; M.E. 005, 019. These growth restrictions, combined with the

historical growth patterns in northerly and westerly directions, indicate that the PAA is most certainly in Madison's path of growth.

All of the factors considered by the *Winona* court in determining that annexation was reasonable are present here: (1) there is clearly spillover development in the annexation area; (2) the PAA is adjacent to the City; (3) there is limited area available for expansion in the City; (4) there is interconnection between the City and the PAA by numerous transportation corridors; (5) there is increased urban development in the PAA; and (6) there is subdivision development in the PAA. The *Horn Lake* court noted that the proposed annexation area must be in "a" path of growth, not necessarily the primary path of growth or the most urgent path of growth. 630 So. 2d at 19. All of the parcels in the PAA meet the *Horn Lake* standard and most are in the primary, urgent path of growth.

C. There are Potential Health Hazards in the Proposed Annexation Area, and the City of Madison Has Demonstrated the Ability to Address Such Hazards.

The *Winona* court set out several sub-factors which indicate that the health hazard indicium is met. They are: (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. *Winona*, 879 So. 2d at 979; *Biloxi II*, 744 So. 2d at 270; *Extension of Corporate Boundaries of Town of Mantachie*, 685 So. 2d 724, 727 (Miss. 1996) ("*Mantachie*"); *Ridgeland*, 651 So. 2d at 558.

The City has demonstrated that there are potential health hazards in the PAA. Many parts of the PAA do not have the benefit of sanitary sewage and trash collection. T. 1300-01. M.E. 035, 036, 051, 052. Also, there are failing on-site wastewater treatment facilities throughout the PAA. T. 1300. Although many residents in the PAA use septic tanks, they are impractical and ineffective due to the fact that the soils in the area are not suitable for such use. M.E. 097; T. 651-52, 1019, 1300. Due to the types of soil, poor maintenance and neglect, the septic tanks

often do not function properly. Sewage tends to pool and residents are inclined to illegally dump their raw sewage into ditches. M.E. 035, 036. The discharge and ponding present significant potential health hazards and are violations of State law. T. 657, 665, 670, 676.

The City has implemented measures to address these potential health hazards. The City has proposed two potential plans for a sanitary sewer system in the PAA and has financially provided for either in its Services and Facilities Plan. T. 1014-18; M.E. 093, 121. The City has demonstrated that it has the ability to provide municipal-level sewer services to the residents within the PAA under either plan. T. 1017, 1019-20. The undeniable fact is that the PAA is growing rapidly and will need sewer service whether it is in a city or outside a city. Madison has addressed all contingencies with its two sewer plans, and according to the evidence, Madison is the only entity that has addressed the clear need for sewer service in the PAA. Madison not only has addressed the need for sewer service in the PAA, but has made a commitment to address the need as demonstrated by the City's adoption of the Services and Facilities Plan as their plan as its plan of action when annexation is finally approved.

Madison provides its residents with garbage collection twice per week and has demonstrated its ability and willingness, upon annexation, to provide these services to the residents of the PAA. T. 1061, 1069, 1080-91; M.E. 123, 125. Though twice per week garbage collection will be a benefit to the residents of the PAA, it should go without saying that the Chancellor did not base his decision solely on this one factor. Despite the Objectors' argument that the trial court made an "arbitrary decision" which is a "quintessential example of an abuse of discretion" by "forcing" twice per week garbage collection, it is evident that the Chancellor considered all twelve indicia of reasonableness before making his decision. Madison's garbage collection service is just one of the many services that will be provided to the residents of the

PAA after annexation and is just one sub-factor of one of twelve indicia to be considered by this Court.

Annexation of the PAA will permit the City of Madison to address any remaining potential health hazards by enforcing its own codes and regulations with regard to sewage and solid waste disposal. M.E. 015.

In the *Hattiesburg* case, this Court found that evidence supported this indicium where there were failing septic systems in the PAA and no formal plans or studies by the County to install a sewage system. *Hattiesburg II*, 840 So. 2d at 87. The Court also noted that Hattiesburg planned to collect garbage twice per week in its PAA whereas Lamar County collected it only one time per week. *Id.* Based on the standards set out in past annexation cases, this Court should conclude that the potential for health hazards from waste and sewage disposal exists in the PAA and that Madison has demonstrated it has adequate plans to address the need for proper garbage and sewage disposal.

D. The City of Madison Has the Financial Ability to Provide Municipal Services to the Proposed Annexation Area.

As noted in their brief, the Objectors concede that Madison has the financial ability to provide municipal services to the PAA. Therefore, this indicium is not at issue. *See* C.P. 680-83.

E. There is a Need for Zoning and Overall Planning in the Proposed Annexation Area, and the City of Madison Has Demonstrated the Ability to Meet that Need.

In other annexation cases, this Court has recognized a need for overall zoning and planning in a PAA, even where there is already a County zoning ordinance in effect. *Ridgeland*, 651 So. 2d at 559. The Objectors largely argue that there is little difference between the City's codes and ordinances and those of the County. However, the lower court correctly determined that "the Zoning and Planning Ordinances of the City are superior to that of the County and it

would be beneficial for them to be enacted in the PAA.” C.P. 684. The following evidence demonstrates the correctness of that determination.

Madison has clearly demonstrated that there is a need for overall planning and zoning in the PAA. T. 1346. The PAA is currently regulated by the County’s Zoning Ordinance. As noted by the trial court, Madison’s zoning and other related ordinances are more comprehensive than the County’s and the City has demonstrated its ability to effectively implement and enforce them. C.P. 683-84; T. 779-81; M.E. 114, 115. In addition to its Zoning Ordinance, Madison has a separate municipal-level Landscape Ordinance, Sign Ordinance, Stormwater Management Ordinance, and Subdivision Regulations, all of which are strictly enforced. M.E. 042, 099, 102; T. 766, 782-90. The City’s Sign Ordinance is much more comprehensive and restrictive than the sign regulation provisions of the County’s Zoning Ordinance. M.E. 099; O.E. 064. Madison’s Stormwater Management Ordinance ensures that properties downstream from developments are not negatively impacted by the increased stormwater created by such development. M.E. 100; T. 787-88. The thoroughness of Madison’s regulations, combined with their proper and uniform enforcement, contributes to the quality of development in the City.

Madison County purported to adopt a new County Zoning Ordinance on October 24, 2005, a little over two months before this case was set for trial. O.E. 048. Interesting. This new County Zoning Ordinance was not officially signed until January 17, 2006, one week after this trial began. T. 1637, 1724. More interesting. Moreover, although the County ordinance refers to a corresponding zoning map (O.E. 48 at p. 28), the zoning map was not certified by the Board of Supervisors until January 23, 2006. T. 1731. Interesting indeed. The County Zoning Administrator admitted at trial that the official zoning map is used with the Zoning Ordinance in enforcement and is very important (T. 1725), but that the zoning classifications on the map officially adopted on January 23, 2006 do not correctly correspond with the zoning

classifications referred to in the text of the Zoning Ordinance. T. 1728, 1730. He also admitted that zoning matters are technical and that in taking care of technical matters, attention to technical detail is important in enforcement. T. 1730-31. Although he was present at the meeting when the Board of Supervisors officially adopted the zoning map, the County Zoning Administrator did not tell the Board that the zoning classifications on the zoning map do not correctly correspond with the zoning classification in the Zoning Ordinance. T. 1734. The result is that as of the time of the trial, the Board of Supervisors had adopted the wrong zoning map. Very much more interesting, the City would suggest.

The above deficiencies evidence the County's lack of attention to detail in zoning matters and, at best, demonstrate the County's inefficiency in the type of detail necessary to enforce a municipal-level zoning ordinance. The fact is that much of the PAA is already *de facto* a part of the City of Madison, and it is difficult in many instances to tell when one leaves Madison the City and enters the PAA. The PAA is in need of a higher level of zoning and enforcement than the County provides. At the trial of this matter, considering all of the evidence, the Chancellor determined that the City of Madison's Zoning and Planning Ordinances are superior to those of the County and that it would be beneficial for those ordinances to be enacted in the PAA. C.P. 684.

By way of contrast to the County, the City demonstrated its ability to meet the need for municipal-level zoning and planning and has, in fact, already been involved in the planning and development of some commercial and residential areas in the PAA. T. 772-76. In April of 2004, the City of Madison adopted the most updated national and international codes available, including the International Building Code (2003 Edition), the International Fire Code (2003 Edition), the International Residential Code (2003 Edition), the International Mechanical Code (2003 Edition), the International Plumbing Code (2003 Edition), and the National Electrical

Code (2002 Edition), among others. M.E. 014, 015; T. 790-91, 559. Madison County, however, still operates under the older 1997 regional versions of these codes. M.E. 014. The newer versions of the codes not only encourage, but require individuals and developers to implement engineering and technological advances in safety. T. 560-61. There are other significant improvements in the newer versions of these codes which will be a benefit for new construction in the rapidly developing PAA. For example, the 2003 International Building Code requires continuing education for inspectors in order to maintain their certification, whereas the 1997 Southern Building Code does not. T. 561-62, 1743-44. More importantly, the fire sprinkling thresholds are more stringent under the 2003 code which requires that multifamily residential occupancies have fire sprinkler systems. The 1997 Southern Building Code under which Madison County operates does not. T. 560-61.

With regard to implementation, the City's codes are enforced by three certified code enforcement inspectors who conduct a ten-step building inspection process, whereas the County has three, part-time independently contracted inspectors, who only conduct a four-step building inspection. T. 790-91, 1743-45. It is noteworthy that Bradley Sellers, the County Zoning Administrator, testified that the County Board of Supervisors had recently voted to hire an additional building inspector, which would have brought the County's part-time inspectors to four. T. 1696. Trouble is, the County Administrator later contradicted this assertion. He testified that the Board of Supervisors had, in fact, voted *against* hiring the additional inspector. T. 1888.

This Court knows the dynamic impact that the Nissan plant and the numerous Nissan-spawned businesses in the vicinity have had on south Madison County. Due to the significant development and urbanization occurring around the periphery of the City of Madison and in the PAA, there is an immediate need for the implementation of the City's updated, comprehensive,

municipal-level codes and regulations. T. 1353-54, 795-98; M.E. 049, 050, 057, 058, 103, 104. Both the City and the PAA stand to benefit from the City of Madison's ability to exert control over the extensive development along the City of Madison's periphery by enforcing its own codes and ordinances. T. 777.

The Building Code Effectiveness Grading Schedule ("BCEGS") is a natural hazard mitigation program instituted by the insurance services offices. M.E. 009; T. 481. Larry Carr, the Superintendent of Public Protection of the Mississippi State Rating Bureau testified that the City of Madison enjoys a Level 4 BCEGS rating. This low rating – based on a scale of 1 (best) to 10 (worst) – qualifies the City for Federal Emergency Management Association ("FEMA") assistance in the case of natural disasters. Madison County, on the other hand, is not eligible for grading by the BCEGS because it does not have plan reviews for residential properties. T. 481-83.

All of the City of Madison's ordinances and regulations, and their strict enforcement, contribute to the overall high quality of the development that has occurred in the City. T. 786, 790. At the trial of this matter, several of the Objectors to this annexation demonstrated a perfect example of the County's lack of enforcement of its Zoning Ordinance. After the City voluntarily excluded their property from the original annexation plans, two residents of Autumn Woods Subdivision each purchased, from the wife of a third Objector, one-acre parcels of land in the Twelve Oaks subdivision so that they could maintain standing to object to this matter. T. 2012, 2061; O.E. 019, 021. These purchases were in direct violation of not only the subdivision's covenants, but also Madison County's Zoning Ordinance. The Ordinance clearly states that residential lots must be, at a minimum, two acres. O.E. 048 at p.43. The toleration of this nonsense, in direct violation of the subdivision's covenants and the County zoning ordinance again demonstrates the lack of enforcement and supervision by Madison County.

The difference in the level of Madison County's versus the City of Madison's code enforcement was further dramatically demonstrated at the trial of this matter. Mr. Bradley Sellers, the County Zoning Administrator, testified that the Links Apartments, located south of Canton and just north of the Nissan plant in Madison County, was fully equipped with fire sprinklers. Sellers informed the Chancery Court that, based on his conversations with the County inspectors, the complex had been sprinkled in accordance with the Standard Building Code as adopted by the County. T. 1717-18. This testimony was, in fact, wrong. Mr. Sellers frankly admitted to the Chancery Court later in the trial that when he personally inspected the complex during a recess after his testimony, he discovered that the complex was, in fact, not sprinkled. T. 1775. With all due respect to the County, the area that Madison the City annexed is in immediate need of comprehensive zoning and planning at the level offered by the City—not the part-time, half-hearted, inattentive and sloppy zoning and planning offered by the County.

The zoning and code issues presented at the trial of this matter are not the only ones that exist in Madison County. M.E. 057, 058. It is imperative that, as the PAA continues to develop and become urbanized, it receive proper enforcement of municipal-level codes and regulations in order to prevent haphazard, substandard development of the area.

There is currently minimal control over development in the PAA; the area is, and in the future will be, in need of more municipal-level zoning and overall planning than currently exists in the County. Madison has clearly demonstrated that it can provide this higher level of zoning, planning, and enforcement. *See Hattiesburg II*, 840 So. 2d at 89; *Biloxi II*, 744 So. 2d at 281; *Madison*, 650 So. 2d at 499-501; *Horn Lake*, 630 So. 2d at 20.

F. There is a Need for Municipal Services in the Proposed Annexation Area, and the City of Madison Has Demonstrated the Ability and Commitment to Provide Such Services.

Factors to be considered under this indicium include: (1) plan of the City to provide first response fire protection; (2) adequacy of existing fire protection; (3) plan of the City to provide police protection; (4) requests for water and sewage services; (5) plan of the City to provide increased solid waste collection; (6) use of septic tanks in the proposed annexation area; and (7) population density. *Winona*, 879 So. 2d at 984.

As previously discussed, the population of the PAA is rapidly increasing. The County is simply not equipped to provide the level of municipal fire protection, police protection, garbage and trash collection, code enforcement, street lighting, sewer services and water services that are needed by such a rapidly developing area. M.E. 082, 083, 084.

Plan of the City of Madison to Provide First Response Fire Protection and Adequacy of Existing Fire Protection

Because of its explosive growth, the PAA is in need of a fully equipped, full-time fire department. M.E. 083. Currently, the County has totally volunteer fire departments and the City officially acts as a mutual aid responder outside its corporate limits. T. 491. Nevertheless, the City of Madison, although not contractually bound to do so, already provides first response fire and rescue protection to the PAA. T. 495-96. In fact, from January 2004 through June 2005, the City of Madison Fire Department responded to 302 calls in the PAA. M.E. 030, 031.

By already providing first response fire protection in the PAA, the City of Madison has demonstrated the PAA's need for municipal level fire protection and its ability and commitment to provide it. The City, which has a professional, full-time fire department that also utilizes the services of volunteer firefighters, has a Class 6 fire rating. M.E. 032; T. 460-61. This fire rating is based on a grading schedule which takes into account the water capacity and pressure, fire department equipment and personnel, communication, and building code enforcement of the

rated area. T. 485. The City of Madison's Class 6 rating results in lower base insurance premiums for homeowners within the City as compared to homeowners living in the Class 9 or 10 rated areas of the PAA. M.E. 039; T. 468. The majority of the PAA has not been rated by the Mississippi State Rating Bureau; therefore, that area is generally considered to be a Class 10 for insurance purposes. T. 553. The unprotected Class 10 rating is the worst fire rating in the state.

The City has a plan to continue to provide first response fire protection to the PAA and, upon annexation, will be obligated to do so. M.E. 121. The City of Madison already has a fire station located in the northwestern corner of the City, which is located just across Highway 463. M.E. 032, 014; T. 554. In addition, there are plans to relocate the central station further north, closer to the PAA. M.E. 032. Larry Carr testified that upon annexation, with collaboration from Bear Creek Water Association ("Bear Creek"), there will be adequate fire flows for the City to maintain the City's Class 6 fire rating. T. 474.

Plan of the City of Madison to Provide Improved Police Protection

The recent commercial and residential development and increase in volume of traffic in the PAA require a significant increase in police patrol and protection in the PAA. M.E. 074, 075. Richard Ambrosino, developer of the Galleria and Fontanelle areas in the PAA testified that one of the reasons he wants his land to be annexed is because there is a need in the area for increased police presence and protection. T. 849. The traffic count data reveal that from 1990 to 2004, traffic has increased by 909.2% on Old Mansdale Road, 323.1% on Livingston Road, and 319.4% on Highway 463. M.E. 107; T. 408-09. There are some posted speed limit signs in the PAA, but the County is unable to adequately enforce them because the sheriff is not statutorily allowed to have radar speed detection devices. T. 387, 389-97; M.E. 074, 053, 054. Many of these speed limit and stop signs contain bullet holes, which also demonstrates the need for a greater municipal-level patrol/police presence in the PAA. T. 396-98; M.E. 053, 054. Currently,

there are only 0.07 sworn officers per square mile in the County, while there are 3.56 sworn officers per square mile in the City. M.E. 074; T. 387. The City currently has 2.92 sworn officers per 1,000 people, which is above the southern average of 2.4, and is well above the County's, which is 0.61 per 1,000 people. M.E. 074, 075; T. 373-74.

A recent field survey conducted by the Madison Police Department revealed a staggering number of traffic violations in the PAA. At Ingleside Drive, between Buckner and Lampton, 86.7% of the vehicles checked were speeding. On New Mansdale Road at St. Joseph School, 76.2% of the vehicles checked were speeding. M.E. 078, 079; T. 403-04. There have been 104 reported traffic accidents in the PAA from 2001 to 2003. M.E. 106; T. 407. In addition, from August 1, 2000 through July 31, 2005, there were 188 City of Madison police responses to the PAA. M.E. 080, 081; T. 381-82. These statistics and observations further demonstrate the need for municipal-level police protection in the PAA. T. 406.

The City has demonstrated its ability to meet the need for municipal-level police protection in the PAA. M.E. 121; T. 411. The City is equipped with 21 sets of radar detector units, as well as one speed detection trailer, which serve to assist in the reduction of speed in the community. T. 387-88. Currently, there are five police patrol beats in the City. M.E. 076. The existing beat system has allowed the police force to have a visible presence in the City, helping to contribute to its status as the City with the lowest violent crime rate in the State. T. 377-78. The City of Madison has developed a new beat plan which will double the number of beats in the combined City. M.E. 077. After annexation, the City plans to add an additional sixteen officers to its department, including an animal control officer, as well as four fully-equipped vehicles, an investigative car, equipment, and uniforms for these officers, and a fully-equipped animal control truck. M.E. 121. Based on the current population of the PAA, the City's police department will

be able to provide the same municipal-level service it currently provides to the City, while maintaining at least a minimum of 2.5 officers per thousand people. M.E. 121; T. 411-12.

The City already assists the County with animal control issues, since the County does not have any animal control officers, further demonstrating the need for a municipal service in the PAA and the City's ability to provide it. M.E. 074, 121; T. 384-85, 399.

Requests for Sewer and Water Service, Plan of the City of Madison to Provide Increased Sewer and Water Services, Solid Waste Collection, and Use of Septic Tanks in the Proposed Annexation Area

In their principal brief, the Objectors argue that the trial judge ignored the “undisputed fact” that the County already provides trash and solid waste collection at a municipal level. In fact, the learned Chancellor did consider the adequacy of the County's garbage and solid waste collection, and determined that “[t]he methods of sewage and trash disposal that are currently being used in parts of the PAA, including poorly functioning septic tanks and illegal dumping of waste, are inadequate for a growing and developing area.” C.P. 686.

Despite the Objectors' claims that there have been no requests for water and sewer services, the evidence at the trial of this matter and the findings of the Chancery Court demonstrate otherwise. The evidence shows that the City has received several requests for sewer service in the PAA over the last few years. Richard Ambrosino, owner of Parkway Development, which is the principal developer of the Galleria and Fontanelle areas in the PAA, testified that he did request sewer and water service from the City and that the development's systems have already been connected to the City's system. T. 860-61. H.C. Bailey, one of the principal developers of the Reunion development in the PAA, also testified that Reunion's sewer system is already connected to the City of Madison's system. T. 960-61. At Annandale Subdivision's request, the City of Madison began providing sewer service in 1995. M.E. 001; T. 110. The terms of this agreement are reflected in the “Agreement for Transfer of Assets”

between the City and Annandale. M.E. 001. The City already provides municipal-level sewer service to 63.8% of the dwelling units in the PAA, including Sunnybrook Retirement Home, Fairfield, Reserve, Windsor Hills, Ashton Park, Countryside Plantation, North Ridge, Highland Ridge, Dogwood Lane, Hart Place, and Klaas Plantation subdivisions. T. 994-97; M.E. 004, 019, 063, 085, 092. So much for the Objectors' "no requests" claims.

The remaining areas of the PAA that are not already receiving sewer service from the City of Madison are growing rapidly and would benefit from municipal-level sewer service. T. 1297. The City has proposed two sanitary sewer improvement plans, Option 1 and Option 2. M.E. 093, 121; T. 704-06, 1014. Option 1 provides for the wastewater in the PAA to be conveyed to the East Madison interceptor, which flows through Ridgeland and carries wastewater into the Savannah Street regional wastewater treatment plant, operated by the City of Jackson, for treatment. In the event that there are sewer line capacity problems with Option 1,⁴ the City has worked out an alternative plan, Option 2. Option 2 provides for the PAA's wastewater to be treated at the newly formed and operated Madison County Wastewater Authority. T. 705-06. The Objectors claim that Option 1 is not viable because there may be capacity problems with the East Madison Interceptor System. However, as Madison's engineering expert, John Sigman, pointed out at the trial of this matter, Option 1 is a "sound, workable system" and there is no evidence - only a "desktop" study - concluding that there might be such a capacity problem. T. 711-12, 756. In fact, Jim Hust, the engineer for Ridgeland is not aware of any complaints of capacity problems made by the City of Jackson, which receives the waste. T. 756. With regard to Option 2, the Army Corps of Engineers has verbally committed to giving the Madison County Wastewater Authority \$7 million for construction projects during the

⁴ The Objectors attempted at trial to throw a red herring into the live well with a suggestion that there might be a capacity problem if Option 1 was utilized.

present fiscal year, and Hust anticipated receiving the balance of the funding in from the Corps in the next fiscal year. T. 1797-1800. Despite the Objectors' argument to the contrary, both Option 1 and Option 2 are viable plans for the provision of sewer service to the PAA. T. 711-15, 721. In fact, at trial, the only entity that offered any plans to deal with sewage in this rapidly expanding area was the City of Madison.

The City of Madison is financially able to provide for the implementation of either of the sewer plans as set out in its Services and Facilities Plan. T. 1014-18; M.E. 093, 121. The City has demonstrated that it can and will provide, within a reasonable time after annexation, municipal-level sewer services to the residents within the PAA—under either plan. T. 1017, 1019-20. As the Chancellor stated, after reviewing all evidence and considering all testimony and other evidence presented at the trial of this matter, “[b]oth Option 1 and Option 2 appear to be viable plans for the provision of sewer service to the PAA.” C.P. 687.

The PAA is part of the Bear Creek certificated area and the City has collaborated with Bear Creek in its efforts to provide water service to the portions of the PAA not already receiving such service. The City demonstrated that, upon annexation, in conjunction with Bear Creek, there are measures in place to provide municipal-level water service to the PAA. M.E. 121. As a matter of fact, Bear Creek is currently providing both potable water and fire protection water in the existing corporate limits of Madison. M.E. 112, 113.

The Objectors argue that the \$250,000 per year which has been set aside in the Services and Facilities Plan for “overlay[ing] existing roads and/or build[ing] new roads and/or drainage and/or other infrastructure improvements” is inadequate. However, as Madison’s Director of Public Works, Denson Robinson clarified at trial, much of the expense for drainage work, road subgrade repair and curb repair work will be taken out of the normal operating budget. The \$250,000 will be used over and above the general fund revenue to fund asphalt and overly

throughout the PAA and is an adequate amount for repair and maintenance of roads upon annexation. T. 1075-76, 1169-70.

In *Madison*, this Court found that the PAA needed municipal services based on testimony from the mayor (the same one as here) that the City of Madison could provide quicker police response than the county, additional police protection, higher level fire protection, overall planning, and garbage pickup. 650 So. 2d at 501-02; *see also Hattiesburg II*, 840 So. 2d at 89-90. The same factors are present in this case. When the City of Madison extends its police and fire protection, zoning and planning, parks, and adequate public works services, then and only then will the PAA be receiving the much needed municipal level services. The Objectors observe that Madison must show, through plans and otherwise, that the residents of the PAA must receive something of value in return for their tax dollars. As was clearly and sufficiently demonstrated at the trial of this matter, Madison has adopted and proposed viable, detailed and specific plans for implementing the various services and facilities that it will provide to the citizens of the PAA. As the Chancellor found, this indicium of reasonableness has clearly been met. C.P. 687.

G. There are No Natural Barriers to the City of Madison's Proposed Annexation.

The annexation areas are contiguous to the City of Madison with unimpeded access into and out of the areas from the City. M.E. 033, 086; T. 1358, 1481. In fact, the roads and streets of the City of Madison already extend into the PAA. M.E. 073. The Chancery Court found that there are no natural barriers that would make it prohibitive for the City of Madison to provide the full range of municipal-level services and to complete its infrastructure investment, including water and sewer services, to the PAA. The only "barriers" identified by the Objectors are a railroad track and Interstate 55 which run through the existing city, but certainly do not act as barriers between Madison and the PAA. There are numerous cities in the state that currently lie on both sides of Interstate 55 and/or are traversed by one or more railroad tracks.

The Chancellor correctly found that there are no natural barriers which would act to prohibit this annexation. CP. 688.

H. Past Performance – the City of Madison Has Provided Services to Previously-Annexed Areas.

The City has shown that it provides its current citizens with a wide array of services, including police and fire protection, ambulance service, animal and pest control, floodplain management, comprehensive planning and zoning, subdivision regulations, street maintenance, street lighting, twice per week garbage removal, drainage maintenance, and recreation facilities and services. The City has, after each of its prior annexations, provided quality services to the newly annexed areas in a timely manner. T. 1359.⁵

As noted by the Objectors, the City of Madison, in its last annexation, promised to build a new fire station on Highway 463. That fire station has since been constructed and is now servicing not only the City of Madison but residents of the current PAA. T. 1360. In addition the City has, in a timely manner, provided municipal-level sewer service to the vast majority of the area annexed in 1995. T. 1360. As demonstrated by the City, all commercial establishments and 99.7% of residences within the City of Madison's municipal limits are connected to the sanitary sewer system and 100% commercial establishments and residences are connected to a municipal-level water system. M.E. 094, 095, 112, 113.

The citizens of the City enjoy all of the benefits associated with a Class 6 fire rating and fire department, as well as its Class 4 building code effectiveness grading. M.E. 032, 009; T. 460-61, 481.

⁵ Objectors complain in their brief that "not until a decade had passed" was Lake Castle Subdivision provided sewer. The fact is that the promise to provide sewer made when Lake Castle was annexed was kept. The fact that the City put the mayor's home subdivision last on the list is to be applauded, not criticized.

The City's citizens also enjoy numerous parks and recreational facilities within the City, organized sports programs, as well as various family activities and special events throughout the year that are all free to the public. T. 594-95; M.E. 064.

The City's Director of Public Works testified about the various drainage and soil conservation projects throughout that the City has undertaken since 1985. T. 904-36; M.E. 065, 066. He further testified about the large number of sewer projects and improvements to those facilities completed by the City since 1979. T. 936-47, 978-98; M.E. 069, 070. The City has been very active in its street paving projects from 1987 to 2005, indicating its ongoing effort to keep its streets in good condition. M.E. 067, 068; T. 999-1013. As Director of Public Works Robinson testified, the City has consistently made substantial improvements in areas that it has annexed in the past, in both the construction and the maintenance of sewer, drainage, and paving. T. 998-99. It is evident that the City of Madison provides more than adequate public works services for its citizens and that it will do so for the citizens in the PAA.

The Chancellor concluded from the trial evidence that the City has a very good record of providing timely and superior municipal-level services to its citizens. C.P. 688. The Court found that this indicium of reasonableness weighs heavily in favor of the City of Madison's annexation. *Id.*

I. Impact (Economic or Otherwise) on Those in the Proposed Annexation Area.

In *Hattiesburg*, this Court ruled that, in determining whether a proposed annexation is reasonable, emphasis should be placed on whether residents in the annexed area will receive anything of value in exchange for their tax dollars. *Hattiesburg II*, 840 So. 2d at 82. Moreover, this Court has stated that "the mere fact that residents in the PAA will have to pay more taxes is insufficient to defeat annexation." *Biloxi II*, 744 So. 2d at 284.

The evidence at trial demonstrated that the residents and property owners in the PAA will receive much improved valuable municipal services for their tax dollars upon annexation, including guaranteed municipal-level fire protection, police protection, animal control, garbage collection, mosquito spraying, domestic and firefighting water, sanitary sewer, and street maintenance and lighting. M.E. 014, 093, 121; T. 1014-20, 474, 384-85, 399, 411. In addition, the residents and property owners of the PAA will receive the benefit of properly enforced comprehensive municipal planning and zoning, as well as up-to-date health and safety protection tools. M.E. 014; T. 772-76, 790, 559.

A large part of the PAA already receives both financial and social benefits as a result of the area's proximity to the City of Madison. For example, a number of residents in the PAA currently receive lower insurance premiums for their homes because of their proximity to the City of Madison and its Class 6 fire rating, without paying any taxes for fire services. M.E. 021; T. 1362-65. Upon annexation, the entire PAA will have the benefit of receiving the City's municipal-level fire protection and Class 6 fire rating. While some residents are already receiving this benefit, this will result in significant insurance premium savings for others. T. 1362-65, 474; M.E. 021, 022. Madison Exhibit 021 demonstrates estimates of the annual financial impact of annexation on residents in the PAA with a Class 10 Fire Rating. For instance, a resident with a \$160,000 home will pay an additional \$871.20 in city taxes and \$144.00 in garbage fees but will enjoy a savings of approximately \$2,228.00 in fire insurance premiums, plus \$105.60 in sanitary sewer savings and a savings of \$83.79 in county special levies, for a total positive benefit of approximately \$1,402.19. The savings on masonry structures are not as much as framed structures, but annexation positively benefits all residents in the PAA. T. 1364-66.

Further, annexation will rectify an anomaly that currently exists in the PAA itself with respect to fire protection and fire insurance rates. The City currently provides first response fire protection to the entire PAA, even though there is no contractual obligation for it to do so. T. 536-37. As Larry Carr testified at trial, no part of the PAA is rated better than Class 9 and the vast majority of the PAA is rated an unprotected Class 10. T. 461-62. However, due to the proximity of the PAA to the City of Madison and the City's voluntary provision of fire protection, some residents of the PAA receive the benefit of property insurance coverage premium rates based on the City of Madison's more favorable Class 6 fire rating. T. 1364-65. Upon annexation, all property in the PAA will receive the City of Madison's Class 6 fire rating and all property in the PAA will have an entitlement to equal fire protection by the City of Madison's professional fire department. T. 509. This is an additional factor which will be a benefit to the citizens of the PAA. Annexation will also result in a more fair distribution of the costs of these services among the citizens (citizens of the current City of Madison and those citizens in the PAA) who already enjoy this benefit. T. 464.

The net additional taxes per acre for vacant agricultural land will only be between \$0.63 and \$1.14 per acre. M.E. 023; T. 1368-69. This is a minimal financial impact, especially considering the fact that the area's proximity to the City of Madison actually results in increased property values. T. 629.

From a social standpoint, the residents of the PAA will clearly benefit from the high level of municipal services that the City is able to provide, as well as the City's comprehensive zoning regulations and ordinances. T. 1362-65. After annexation, the more intangible social benefits gleaned by the residents of the PAA will also be far-reaching. For example, as most objectors testified, mailing addresses in the PAA are "Madison, Mississippi," which enables them to reap certain benefits including, in some instances, the City's fire protection rating and resulting lower

insurance premiums, as well as increased property values. T. 2025-26, 2034, 2045. The City of Madison was recently recognized as one of the top 100 American cities by Money Magazine and it has been named the Most Livable City in the State of Mississippi. T. 59; M.E. 048. The residents of the PAA enjoy the parks and recreation programs of the City. T. 1371; M.E. 091. The City of Madison is also the only city in the history of Mississippi to have an International Chamber of Commerce. T. 1383. Overall, the City of Madison provides its residents with a good quality of life and helps to protect the property values of the homes within the City. T. 1370.

The evidence has shown and the Chancellor correctly determined that when the PAA becomes part of Madison the City, the residents will enjoy numerous invaluable benefits and services in exchange for their tax dollars, in addition to those that they are currently receiving from the City.

J. The City of Madison's Proposed Annexation Will Not Adversely Impact the Voting Strength of Any Minority Groups.

The City of Madison's annexation will not have any significant impact on the voting strength of any minority group. M.E. 018, 087, 088, 089, 090. After annexation of the PAA, the City of Madison's minority voting population will actually increase by 2.1%. T. 1373-75. Moreover, this Court has held that it does not give great weight when the issue is raised by one without standing. *Columbus*, 644 So. 2d at 1180. In this case, the Objectors have not offered any minority objector witnesses aggrieved by a dilution in minority voting strength. As the Chancery Court found, this indicium of reasonableness weighs in favor of annexation. C.P. 692.⁶

⁶ The Objectors argue that the voting power of the PAA's African-American residents would be altered upon annexation because they would not have a "direct voice in choosing the persons who directly govern the populace." However, that is not the standard set out by this Court. The standard set out by this Court is whether or not the annexation will dilute the minority voting strength of a protected minority group.

K. Property Owners in the Proposed Annexation Area Have and Do Enjoy Benefits By Being Near the City of Madison Without Paying Their Fair Share of Taxes.

Property owners, residents and business owners throughout the PAA currently benefit from their proximity to the City of Madison, reaping the benefits of the services as well as all of the unique characteristics of the City. T. 1285. Annexation supporter Richard Ambrosino, who is in the midst of developing the Galleria and Fontanelle areas in the PAA, candidly told the Court that the reason his property values are good is because of their proximity to the City of Madison. T. 850. Robert Travis, retired attorney (and probably the greatest amateur golfer in Mississippi history), who is a resident of the Annandale subdivision in the PAA, testified:

We use all of the City services, we travel the streets, shop at the stores, go to the post office, go to the parks. Use every service in the City and pay nothing for it. And we are provided with sewage service as well as fire protection, and I suppose if we needed it, police protection, although we've not needed it. But I just feel like we have sponged off of the City as . . . residents of Annandale not being in the City, I think we should pay our part of the things that we get . . . by living where we live.

T. 1186-87.

Many of the people who live and own property in the PAA enjoy significantly lower fire insurance rates because of their proximity to a municipality with a Class 6 fire rating. T. 1365. Despite the fact that they do not pay the taxes associated with maintaining the full-time, professional fire department, the citizens of the PAA reap the benefits of municipal-level, Class 6 fire protection and rescue services as well as the economic advantages associated therewith. T. 536-37; M.E. 030, 031, 037, 038, 039. PAA residents also enjoy the benefit of being provided protection by the City of Madison's Police Department without paying for those services. T. 380-81; M.E. 080, 081. For example, Madison County Sheriff Toby Trowbridge testified that when the tornado struck the Fairfield subdivision in the PAA in 2001, the City of Madison

Enlargement and Extension of Municipal Boundaries of City of Clinton, 955 So. 2d 307, 327 (Miss. 2007) ("Clinton"). Madison has demonstrated that it will not.

provided “great” response and assistance to this area until such services were no longer needed. T. 1688.

Residents of the PAA enjoy the numerous parks throughout the City as well as the recreational programs and community activities put on throughout the year by the City of Madison. T. 599-602; M.E. 064, 091. The City provides sewer operation and maintenance services to the Annandale subdivision as well as to a vast majority of other residents in the PAA, and provides water service to a significant number of residents. T. 986. All of these services are provided to PAA residents without any levy on them of ad valorem taxes, leaving the City’s current residents to pay the total cost. This is unfair to the City’s current residents who pay taxes to help fund these services.

It is clear that the residents and property owners of the PAA currently benefit from their proximity to the City of Madison without paying their fair share of taxes. Unless the annexation is approved and the PAA becomes a part of the City, this unfairness will continue.

In *Taylorsville*, 542 So. 2d at 922, residents of Taylorsville’s PAA argued that the Town could do nothing for them and that they would receive no benefits from annexation. This Court stated that the PAA residents were ignoring the benefits that Taylorsville had and would continue to offer them. The fact could not be ignored that the citizens were enjoying and would continue to enjoy participation in the community and all of the other benefits associated with their proximity to the Town, whether or not they were annexed.

The same is true with the residents of the PAA in this case. Though some claim to be receiving no benefit from their proximity to the City, they will continue to be a part of the Madison community and reap all of the other benefits the City has to offer, whether or not they are annexed. The Chancellor correctly found that this indicium “strongly favors annexation.” C.P. 693.

L. Other Factors Support the City of Madison's Annexation.

Madison County is one of the fastest growing counties in the State of Mississippi. As noted before, the Nissan automobile manufacturing plant that was recently built just four miles north of Madison's city limits is driving growth even faster. M.E. 044. South Madison County, including Ridgeland, Madison, and the areas west of those cities have received the bulk of the growth, particularly residential development. Because of the rapid development in and around the City of Madison, the need for enhanced ordinances, building codes, and municipal-level services has rapidly accelerated. The City of Madison has demonstrated to its residents and to the residents of the PAA that it is willing, able and committed to providing these much needed services. T. 1381-83.

As one annexation supporter testified, "Madison has made a name for itself. People want to live in Madison. . . . Businesses want to come to Madison." T. 52-53. Residents, property owners and developers alike recognize the uniqueness of the City of Madison. They recognize the superior management practices and stability of the leaders of the City as well as their dedication and attention to detail in running their departments. T. 1378. As demonstrated at the trial of this matter, property owners and real estate developers want to be a part of the City. T. 630, 849, 950, 1186. The developer of the Galleria and Fontanelle properties located in the PAA has already invested \$30 million into these properties and plans to invest a total of \$500 million overall. T. 858. In order to ensure that his property developments maintain their value, the developer asked the Court from the witness stand to allow his property to become a part of the City of Madison. T. 850. H.C. Bailey, Jr., one of the principals in the development of the Reunion subdivision in the PAA, testified that the City of Madison has demonstrated excellent leadership, has created a good quality of life, and has contributed to significant increase in property values. The City of Madison is a good, strong municipality with the capability to

manage the services and functions necessary to maintain a development such as Reunion. T. 950. He testified about the reasons that he favored annexation of Reunion by the City of Madison. T. 951.

Though requests by developers to have their property brought into a city may not be totally unprecedented, the Chancellor obviously noted the number of developers seeking to have their property brought into the City and the large capitol investments obviously represented by these requests. The Chancellor could not have missed the fact that these experienced, successful businessmen, who have had past dealings with the City of Madison, believe in the City's ability to deliver high quality services in a timely fashion and believe that annexation will positively benefit property values in the PAA. These are clearly other factors that weigh in favor of annexation.

The evidence also demonstrated (and the Chancellor again must have been favorably impressed) that the City of Madison's department heads are dedicated to providing top quality services to the citizens of the City. Whether they are called upon to address drainage and sewage issues or to deal with other reasonable requests of concerned citizens, the department heads are clearly in tune with what needs to be done to address the best interests of the City and its residents.

Each of the City of Madison department heads testified at the trial of this matter. Each was qualified, experienced, and knowledgeable of both the City and the PAA. The longevity of service for Public Works Director Robinson (23 years), T. 864; Police Chief Waldrop (14 years), T. 384; Fire Chief Lariviere (19 years), T. 531; City Clerk Crandall (18 years), T. 237; and others demonstrated stability and long-term consistent delivery of high quality municipal services. Mayor Mary Hawkins Butler has been Mayor for the last 25 years, and has been unopposed in the last three elections. T. 79. There is obviously citizen satisfaction with the delivery of

municipal services. The Mayor attended every minute of the trial, which lasted approximately three weeks, and City Aldermen alternately visited the trial over its course, indicating the importance that the City administration places on this annexation and on the future well being of the City and PAA.

The City of Madison is on the cutting edge of regulations, codes, ordinances, and enforcement. The active enforcement of these regulations, codes, and ordinances enables the City to guide, direct, and control its growth. This ensures the quality of life that citizens have come to enjoy and protects property values. T. 1379.

Finally, and very importantly, Joseph Lusteck, the named Objectors' expert urban planner, admitted both in his deposition and at the trial of this matter that the PAA was reasonable for annexation, even that section he found to be "questionable." Mr. Lusteck stated that the spillover development and types of development taking place in the PAA were reasons why the City of Madison's annexation is reasonable. O.E.. 073; T. 1193-1231. The Chancellor had no expert or other competent testimony before it upon which it could rely to conclude that annexation of any of the PAA was not reasonable. Mr. Slaughter, the City's expert witness in urban planning, civil engineering and municipal finance, testified convincingly and positively regarding the facts of the case and his professional opinions as they apply to the twelve indicia of reasonableness. His testimony was unchallenged by any other expert testimony.

This brings us to the Cross-Appeal.

CROSS-APPEAL

I. STATEMENT OF THE ISSUE

Whether the trial court erred in refusing to grant the annexation of the three parcels comprising approximately 2.5 square miles of land to the north of the current City of Madison.

II. SUMMARY OF THE ARGUMENT

The Chancery Court found that the three sections of land (a 2.5 square mile area of land) to the north of the City of Madison, and shown in gray on Page 1 of this brief, had experienced little if any spillover development and that there are no roads or streets extending into those areas. The Chancellor found that there was a lack of development and access roads in the area and, therefore, the time for annexation had not yet arrived. T. 677. The learned Chancellor was leaning over backwards to be fair. However, there was no evidence presented at trial indicating no spillover development in the excluded areas. Moreover, the remainder of the twelve indicia of reasonableness weighed overwhelmingly in favor of annexation by the City of Madison. The Chancellor's finding as to the 2.5 square miles of land north of the current City of Madison is manifestly wrong and is not supported by substantial and credible evidence presented at the trial of this matter.

III. ARGUMENT

The excluded area that is the subject of this Cross-Appeal includes that part of Section 31 which lies east of Bozeman Road and west of I-55; Section 32; and Section 33, west of Highway 51, all in Township 8 North, Range 2 East. C.P. 693. The Court's reasoning for not approving annexation of those parcels of land was the "lack of development and access roads" in the area. C.P. 677. But development and access roads are only two sub-factors to consider under this Court's approved path of growth indicium. *Winona*, 879 So. 2d at 977. Moreover, there are

twelve indicia of reasonableness- not one. And there was no evidence to support exclusion based solely on a determination that there was lack of development and access roads into the area. The Court can look at the map which is Page 1 of this Brief and see that Section 31 is virtually surrounded on the south, east and west by the territory which the Chancellor found to be reasonable for annexation. (In fact, the Court allowed annexation of part of Section 31 east of Interstate 55, and a new office building under construction there is clearly visible from I-55.) The Court can also see that there are access roads leading from the annexed portion of Section 31 into Section 32. And the Court can also see that Section 33 is bordered on the east by U.S. Highway 51 with access roads leading into it.

Finally, both Madison's and the Objectors' planning experts agreed that this area was reasonable for annexation. T.1214-19, 1291-96, 1381-83; M.E. 073.

So there was no evidence to support exclusion of this important 2.5 square mile area.

A. Under the Totality of the Circumstances, the Twelve Indicia have been met

This Court has held that the twelve indicia "are only indicia of reasonableness, not separate and distinct tests in and of themselves." *Biloxi II*, 744 So. 2d at 276. In addition, "[t]he chancellor must consider all [twelve] of these factors and determine whether under the totality of the circumstances the annexation is reasonable." *Id.*

The Chancery Court specifically found that the City of Madison has a need to expand its corporate limits (C.P. 676), that there are potential health hazards from sewage and waste disposal in the proposed annexation area (C.P. 680), that the City of Madison has the financial ability to make improvements and furnish municipal services promised (C.P. 683), that it would be beneficial for the City of Madison's zoning and planning ordinances to be enacted in the PAA (C.P. 684), that there is a need for municipal services in the PAA (C.P. 687), that there are no natural barriers to the City of Madison's proposed annexation (C.P. 688), that the City of

Madison has a very good record of promptly providing its current citizens with a wide variety of services (C.P. 688), that there will be a mostly positive impact on residents of the proposed annexation area (C.P. 689), that the annexation will not have any significant impact on the voting strength of any minority group (C.P. 692), and that those residing in the PAA have and will continue not to pay their fair share of taxes if the area is not annexed (C.P. 692).

The only two sub-factors that the Chancery Court deemed not to weigh in favor of annexation for the 2.5 square mile area of land were lack of development and access. The only evidence at trial – the only evidence – was that the area is in the City’s path of growth.⁷ Even if there had been substantial evidence at trial supporting the Court’s decision with regard to these sub-factors, there are eleven other indicia that should have been considered. This Court “requires [that the indicia] be considered not in isolation, but rather individually and then collectively.” *In re City of Jackson*, 912 So. 2d 961, 972 (Miss. 2005). This Court has recently noted that a Chancellor’s decision regarding the approval of a PAA was manifestly wrong, primarily based on her failure to consider all twelve indicia when making her determination about a portion of the PAA and, instead, relying on only two sub-factors. *Id.*

In *Macon*, 854 So. 2d at 1038, the Objectors argued that a certain area of the PAA should be excluded from the annexation. The Objectors argued that “the ‘cut out’ area has not had spillover development and that “the ‘cut out’ area should be excluded from the annexation since it is not more in the path of growth than other areas excluded.” This Court held that “[t]hese arguments are without merit. The vacant and undeveloped land in the ‘cut out’ area is needed for future development. The Chancellor ignored the strategic location of the 2.5 square mile area and the unprecedented growth of the City of Madison and the PAA.

⁷ The map on Page 1 of this brief shows that the excluded area to the north is directly between the City and the Nissan plant.

The mere fact that certain portions of the 2.5 square mile area lacked access and development was not a sufficient reason to foreclose its annexation by Madison. Any vacant land available within the excluded area is certainly needed for the City's development in the very near future. The introduction of the Nissan plant, just north of the PAA, has completely changed the growth dynamic of south Madison County. The "explosive" growth of Madison the City has increased over the last few years, in a large measure due to the construction of the Nissan plant. The annexation of these parcels is essential to the ability of Madison to control its periphery, and, Madison submits, to the long term overall success of this annexation effort.

The excluded parcels are clearly within the path of growth of the City of Madison and are ripe for annexation. And as Mike Slaughter and the City's director of public works, Denson Robinson testified, they are certainly in need of municipal level services. T. 1027, 1347-48.

This Court is aware that annexation has become an increasingly expensive and time-consuming process. It is important for cities to consider annexation of all areas that are reasonable for the foreseeable future growth of the city when planning an annexation—and Madison has clearly demonstrated that it plans carefully with efficient use of its citizens' tax monies as a consideration. The area at issue in this Cross-Appeal already constitutes spillover development from Madison, and will continue to do so in the upcoming years. The area is certainly in Madison's path of growth and, if it is not awarded at this time, it will undoubtedly have to be a part of an annexation attempt in the near future. In *Dodd*, this Court noted that "where it can be reasonably anticipated that a certain area will become a part of a city in a reasonable time, it is better to take it in and develop the same properly and wisely" 118 So. 2d at 330.

B. The Evidence Presented at Trial Does not Support the Chancellor's Finding

The area of land excluded by the Chancery Court is squarely within Madison's path of growth. Not only is the Chancery Court's decision with regard to the excluded area not supported by the weight of the evidence, it is not supported by *any* credible evidence submitted at trial. The finding is therefore manifestly in error and should be reversed. *Hattiesburg I*, 588 So. 2d at 819.

At the trial of this matter, the Objectors' own expert admitted that there was spillover development in the 2.5 square mile area of land at issue. T. 1214. Joseph Lusteck, the Objectors' urban planner, testified at trial that if there were development going on in that area, the area was reasonable for annexation. *Id.* As the proof demonstrates, the proposed Galleria Parkway extends into the excluded area to the north. M.E. 19, 20. Therefore, according to the testimony of the Objectors' own expert as well as the exhibits introduced at trial, the area contains spillover development and is ripe for annexation.

Mr. Lusteck also admitted at trial that if there were road access through the section in question, the area would be reasonable for annexation. T. 1216-17. As the proof demonstrates, Galleria Parkway, which runs through Sections 31 and 32 of the area, is currently under construction and offers road access to the area upon its completion. T. 1215-17; M.E. 19, 20. Moreover, Interstate 55, Highway 51 and a railroad track all touch the 2.5 square mile area. There is simply no evidence that there is a lack of access roads in the area.

Mr. Lusteck referred to the excluded area as one which could be "a nice commercial area." T. 1218. This was based on the Highway 51 road access as well as the railroad coming through the area. T. 1218-19. Mr. Lusteck identified the area as a "good location" for a commercial area. T. 1218. In *Dodd*, this Court stated that "[t]here is much merit in the theory of overall planning, namely, where it can be reasonably anticipated that a certain area will become a

part of the city in a reasonable time, it is better to take it in and develop the same properly and wisely . . . rather than to let the area develop in a harum-scarum manner as each builder or developer may determine.” 118 So. 2d at 330. Such is the case with the 2.5 square mile area of land. The area should be annexed before the future commercial area identified by Lusteck develops in a haphazard manner.

Madison’s expert in urban planning, Mike Slaughter, testified that the Galleria Parkway, which runs north and south, lies directly in the area in question. T. 1252-53. The Parkway is currently under construction and has been extended a mile and a half north of the existing city limits, just east of Interstate 55. T. 1252-53.

The evidence introduced at trial, including the testimony of both Madison’s and the Objectors’ expert witnesses, was that the 2.5 square mile area of land in question contains both spillover development and access roads. There was no evidence presented at the trial of this matter suggesting otherwise. None of the Objectors were from the excluded area. There is simply no evidence to substantiate the Chancery Court’s finding that there is a lack of development and access roads in the area. C.P. 677. The finding is therefore not supported by substantial and credible evidence presented at the trial of this matter. Even if there had been such evidence, it would only have supported two sub-factors of the path of growth indicium. In accordance with the longstanding standard of this Court, the decision of the Chancellor with regard to the 2.5 square mile area of land is manifestly wrong and should be reversed. *Biloxi II*, 744 So. 2d at 277. This Court has the authority to reverse a Chancellor’s finding when that finding is not based on credible evidence presented at trial. *Id.* (noting that reversal is appropriate where “the chancery court’s finding of ultimate fact that the annexation was (un)reasonable is manifestly wrong or without the support of substantial, credible evidence”).

IV. CONCLUSION

The Court below based its decision that annexation of the area allowed was reasonable under the totality of the circumstances under this Court's Twelve Indicia of Reasonableness. The evidence supporting that decision was credible- indeed overwhelming and virtually undisputed- even by the Objectors' land planner, Lusteck. The Chancellor's decision in that regard should be affirmed.


The Chancellor erred when he excluded the 2.5 square mile area to Madison's north, because he reached the decision that there was lack of development and access to the area without any evidence to support his decision, and by then apparently concluding that the area was not in Madison's path of growth based on two sub-factors of one indicium, which were without evidentiary legs. Finally, in excluding the 2.5 square mile area, he did not consider the totality of the twelve indicia analysis as required by this Court. In leaning over to be fair, the Chancellor leaned too far and fell into reversible error. The case should be reversed and rendered on the City of Madison's Cross-Appeal. The area is crucial to the City. The boom surrounding Nissan's welcomed presence needs good management. If the area is denied to the City, it will inherit the problems that inevitably result from uncontrolled rapid growth.

Respectfully submitted, this the 15th day of June, 2007.

CITY OF MADISON, MISSISSIPPI

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BY:



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CERTIFICATE OF SERVICE

The undersigned counsel of record for the City of Madison, Mississippi, hereby certifies that a true and correct copy of the above and foregoing has this day been served, unless otherwise indicated, via United States First Class Mail, postage fully prepaid, upon the following:

**Honorable Jason Floyd, Jr.
Special Chancery Judge for District 11
204 Tate Street
Senatobia, MS 38668**

**T. Jackson Lyons
T. Jackson Lyons & Assoc.
120 N. Congress St., Suite 420
Jackson, MS 39201**

THIS the 15th day of June, 2007.



James L. Carroll