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, MISSISSIPPI

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

APPEAL FROM THE CHANCERY COURT
MADISON COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLEE / CROSS-APPELLANT

ORAL ARGUMENT IS REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

The excluded area is rapidly developing and is in immediate need of municipal level services. Oral argument will give this Court an opportunity to have relevant portions of the excluded area pointed out to it on the numerous maps and other exhibits that are essential to the determination of the Cross-Appeal. Oral argument will also give the City of Madison an opportunity to explain the significance of such exhibits and to answer any questions which this Court may have. This is particularly important because the excluded area is developing so rapidly and because this Court is being asked to reverse and render the decision denying that part of the annexation.

I. SUMMARY OF THE ARGUMENT

The Chancellor's conclusion with regard to the area on Cross-Appeal should be reversed and rendered. The overwhelming weight of the evidence at the trial of this matter demonstrated that annexation of that area is reasonable.

II. ARGUMENT IN REPLY TO OBJECTORS' ARGUMENT IN ANSWER TO CROSS-APPEAL

A. Do the Objectors Even Have Standing to Oppose the Cross-Appeal?

The Objectors' brief[1] admits that not a single Objector owns real property in the excluded area[2] that is the subject of Madison's Cross-Appeal. C.B. 23. Nevertheless, the Objectors (or at least those who control the contents of the Objectors' brief) plow ahead with their opposition to even that portion of the annexation. A legitimate question is, "Why?"[3] This Court has held that any person whose property rights are affected by a court's annexation decree may appeal. *Enlargement and Extension of Municipal Boundaries of City of Clinton*, 920 So. 2d 452, 454 (Miss. 2006). But this Court has also held that certain city residents did not have standing to appeal a city planning commission's decision because, *inter alia*, the residents did not own the

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[1] For purposes of this brief, the Appellants' Combined Reply Brief on Direct Appeal and Answering Brief on Cross-Appeal will be cited as "C.B. 1, C.B. 2," etc. The portion of the record containing the transcript of the Chancery Court hearing will be cited as "T. 1, T. 2," etc. Exhibits presented by the City of Madison will be cited as "M.E. 1, M.E. 2," etc. The amicus brief filed by St. Dominic Health Services, Inc. ("St. Dominic") will be cited as "A.B. 1, A.B. 2," etc. Exhibits presented by the Objectors will be cited as "O.E. 1, O.E. 2," etc. The Brief of Appellee/Cross-Appellant will be cited as "M.B. 1, M.B. 2," etc. The Appellants' Principal Brief will be cited as "O.B. 1, O.B. 2," etc. The trial court pleadings will be cited as "C.P. 1, C.P. 2," etc.

[2] "The excluded area" refers to the territory at issue in the City of Madison's Cross-Appeal. This area is clearly marked on page one of the Brief of Appellee/Cross-Appellant and is composed of the majority of Township 8N, Sections 31 and 33, and all of Township 8N, Section 32.

[3] Perhaps the mindset driving these hollow objections is revealed by the strange transfer of real property from one objector to another in order to preserve the latter's standing to object to the annexation (no charge, thank you very much) after Madison had voluntarily excluded the latter's property from the original annexation, T. 1941, 2012, 2046, and the referral by the grantor-objector in that "transaction" to streetlights as "light pollution." T. 1928.

property in question or property adjacent thereto. *Burgess v. City of Gulfport,* 814 So. 2d 149 (Miss. 2002).

Perhaps this Court will hold that these Objectors have standing to object in spite of its decision in *Burgess, supra.* If they do have standing, it is difficult to imagine how. And if they do have standing, it pales in comparison to the interest of investors and other property owners in and adjacent to the excluded area who desperately want to be annexed by the City of Madison.

Interested landowners who have committed millions of investment dollars in and immediately adjacent to the excluded area have expressed an intense desire to be annexed into the City of Madison. Richard Ambrosino testified that his business has invested $30 million in the area immediately to the north of Madison and intends to invest a total of $500 million there. Tr. 858. He wants his property annexed, Tr. 849; in fact if the property is not annexed, he will petition to be annexed into the City. T. 849.

In the excluded area, St. Dominic owns 51.2 acres of land. A.B. 1. It feels so strongly about its investment that it has filed an amicus brief herein.[4]

Both property owners had specific reasons for wanting to be annexed. Mr. Ambrosino was interested in municipal level services and additional police protection from Madison that would be "very, very, important" and necessary. T. 849. St. Dominic tells this Court that the excluded area is in need of municipal level services, ordinances and zoning. A.B. 3.

These landowners who have invested their money know what they need in order to protect and enhance their investment. They are stakeholders -- Investors who are economically

[4] The Objectors attempt to diminish the impact of the amicus brief by arguing that St. Dominic is asking this Court to take judicial notice of information that does not meet the requirements of Rule 201 of the Mississippi Rules of Evidence. To the contrary, the Certificate of Need Application filed by St. Dominic is a matter of public record and may be viewed at the Mississippi State Department of Health offices, and is clearly admissible under Rule 201.

vested in the excluded area. Unlike the Objectors, they are not mere "kibitz[ers]", C.B. 23, when it comes to the excluded area.

In the last annexation by the City of Madison, *Enlargement and Extension of Municipal Boundaries of City of Madison*, 650 So. 2d 490, 503 (Miss. 1995) ("*Madison*"), this Court recognized the lower court's deference to the wishes and needs of property owners in an annexation. (Citing with approval the lower court's finding that "it [is] very difficult to say that an annexation is unreasonable, when the city asks for it and the landowner asks for it."). This Court rarely sees property owners who want to be annexed by a city. Here, it sees property owners with millions of investment dollars pleading to be annexed by the City of Madison, juxtaposed against Objectors who have no economic stake in the Cross-Appeal, but who object just for the sake of blocking Madison's growth. These Objectors deserve only to be ignored.

B. The Excluded Area Is Currently in Need of Municipal Services and the City of Madison Plans to Provide Such Services.

In *Madison*, 650 So. 2d at, 501-02, this Court found that where evidence of the need for municipal services was in dispute, guaranteed municipal level fire protection, increased police protection, municipal level planning, twice a week garbage collection, and superior enforcement of zoning and building codes served as evidence supporting the chancellor's determination that the PAA was in need of municipal services.

The Objectors falsely claim that the City of Madison has no plan to provide services in the excluded area and that the area is not in need of municipal services. C.B. 23. The testimony clearly demonstrated that the City of Madison can and will provide needed services to the excluded area. For instance, Chief Lariviere testified that the entire area sought to be annexed is in need of municipal level fire protection, T. 564, and that the City of Madison's services and facilities plan places the fire department in a position to provide the entire PAA with the level of fire and rescue services currently provided within the City of Madison. T. 551-52. The City of

Madison plans to hire an additional fourteen patrol officers, and an additional investigator, and will purchase four new police cars to serve the PAA. T. 147-49, M.E. 121. Chief Waldrop testified that the City of Madison can provide increased police protection for the PAA. T. 373-76. Chief Waldrop also testified that there is a need for municipal level police protection in the entire PAA. T. 406-08. Regional and municipal planning expert Mike Slaughter testified that the PAA is in need of improved planning and zoning, T. 1241, 1353, and that the City of Madison provides planning services superior to those offered by the County. T. 1353-54.[5] In addition, the City of Madison provides garbage collection services twice a week, as opposed to the once a week service currently provided within the PAA by the County. M.E. 14. Finally, as in the case law cited above, while Madison County provides zoning and building codes for the PAA, the testimony demonstrated that the City of Madison provides superior enforcement of such codes. *See* T. 89, 480-82, 815-16, and discussion *infra.*

As the Court can see, the factors cited in support of the chancellor's finding of a need for municipal services in the 1995 *Madison* decision are present in this case as well. In addition, it is clear that the City of Madison plans to provide these services to all areas of the PAA. Therefore, the Objectors' assertion that no services are needed in the excluded area and that the City of Madison has no plan to provide such services is simply wrong and is inconsistent with the testimony in the Record.

[5] Mr. Slaughter also testified that the PAA is in need of municipal level police services, T. 1347, municipal level fire service, 1348, and municipal level street and maintenance service. T, 1348-49. Furthermore, Alan Hoops, Director of Community Development for the City, and an expert in planning and zoning, testified that there is a need for planning and zoning in the entire PAA, T. 796, and that the City's facilities and services plan will allow the City to provide high-quality planning services to the PAA. T. 798.

C. Interested Landowners Agree that the Excluded Area Should be Part of the City of Madison and that it Is in Need of Municipal Services.

We have previously touched on the issue of landowners with a real economic interest in the excluded area. The Objectors' brief conveniently leaves out the fact that all interested landowners who have voiced their opinions in these proceedings with regard to the excluded area, and the area immediately adjacent thereto, expressed their desire to be a part of the City of Madison. This Court recognized the importance of this consideration in the last Madison annexation decision. In *Madison*, 650 So. 2d at 503, this Court cited with approval the chancellor's opinion which said, in part, that "it [is] very difficult to say that an annexation is unreasonable, when the city asks for it and the landowner asks for it." *Id.* This Court affirmed the annexation of the parcel.

The evidence related to the excluded area in this case is strikingly similar to the evidence surrounding the aforementioned land in the 1995 *Madison* case. In both instances, the City of Madison, along with the interested landowners, wished for the property at issue to become part of the City of Madison. Once again, in this case, the interested landowners agree that the excluded area is in need of municipal services, and that the City of Madison will provide them. This Court should reverse and render on the City of Madison's Cross-Appeal.

D. It Is Essential that the City of Madison Be Allowed to Control the Development in the Excluded Area.

The Objectors attempt to downplay the importance of allowing the City of Madison to control the development and imminent development occurring on its border within the excluded area by asserting that "the County's zoning and building code apparatus is designed to produce municipal-level structures and development. This fact obviates the purported pressure on the City to regulate hypothetical growth on its borders." C.B. 24. This argument might have more punch if the County actually had municipal level zoning and code enforcement. However, the

County's zoning and code enforcement cannot compare to the zoning and code enforcement offered by the City. This Court has stated 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 . . . rather than to let the area develop in a harum-scarum manner . . . ." *Dodd v. City of Jackson*, 118 So. 2d 319, 330 (Miss. 1960).

Numerous witnesses testified at the trial of this matter that it is important for the City of Madison - not Madison County - to control the development that is occurring on its periphery. For instance, Mayor Hawkins Butler testified that it is "very, very important" to the City of Madison's future that the City be allowed to control the planning and enforcement aspect of the development that is going on near the City. T. 98. In addition, Mike Slaughter testified that the City of Madison should be allowed to implement its planning and zoning ordinances in the areas developing on the City's periphery in order to ensure a uniform flow from the existing City. T. 1289, 1296. The Objectors' own expert even admitted that it is a good practice to bring land that will be developed into a city before development of the area is complete. T. 1230-31.

The testimony of numerous witnesses illustrates that it is reasonable to anticipate that the excluded area will eventually become part of the City of Madison.[6] Mr. Slaughter testified that the entire area proposed for annexation lies within the City of Madison's path of growth. T. 1290. In addition, the Objectors' expert conceded that the excluded area is currently reasonable for annexation or will be reasonable for annexation in the future. T. 1211-18. This evidence demonstrates that even if the County's code apparatus "is designed to produce municipal level

[6] The Objectors assert that the lack of competition from another municipality for the excluded area supports the chancellor's determination that annexation of the area is not reasonable. C.B. 24. However, the fact that Madison will not likely face competition for the area actually supports annexation, as this lack of competition makes it even more reasonable to conclude that the area will eventually become part of the City of Madison.

structures and development", C.B. 24, (whatever that means) the City of Madison should still be allowed to bring in the excluded area in order to ensure uniform development of the area.

Returning to the issue of the effectiveness of the County's "zoning and building code apparatus", the evidence presented at trial, coupled with the St. Dominic amicus brief, points overwhelmingly to the conclusion that the City of Madison provides a more effective zoning, planning, and building scheme than the County. First, developers owning property within the PAA agreed that the City provides superior zoning and planning services. Mr. Ambrosino, owner of the Galleria Parkway development, testified that the City's building review procedure and other building requirements are more detailed than the County's and that the City's building ordinances are more in depth than the County's. T. 853-54. Mr. Donald Brata, an owner of commercial property on the border of the City and the County, testified that the City's zoning would do a better job of ensuring that the area near his property developed in a desirable manner. T. 629-30. In addition, as mentioned above, St. Dominic notes in its amicus brief that the County cannot provide code enforcement in the excluded area comparable to that provided by the City and that the excluded area will benefit from the City's zoning and codes. A.B. 3.

Numerous other witnesses testified that the City's zoning, planning, and building scheme is superior to the County's. Mr. Slaughter testified that counties are not set up to operate and provide planning and zoning services at the same level as a municipality such as the City of Madison. T. 1353-54. He also testified that the City has ordinances to which the County has no counterpart, such as landscape ordinances, sprinkler ordinances, and improved sign ordinances. T. 1356. Mayor Hawkins Butler testified than that the City has adopted more up-to-date codes

than those adopted by the County. T. 89.[7] Mr. Larry Carr, an employee of the Mississippi State Rating Bureau, testified that the City has received a "building code effectiveness grading classification" from the State Rating Bureau, while the County has not.[8] T. 480-82. Finally, Chief Lariviere, an expert in building code enforcement, testified that the City's building code is superior to the County's because, *inter alia*, it is newer and "allows people to take advantage of technology changes and improvement in construction techniques." T. 560. These facts belie the Objectors' argument that there is no real need for the City to regulate growth occurring on its borders.

E. There Is Development in the Excluded Area and There Are Ample Access Routes to the Area from the City of Madison.

The Objectors embrace the lower court's determination that there is not sufficient development within or access to the excluded area to warrant annexation. C.B. 23-24. However, as stated in the Brief of Appellee/Cross-Appellant, this determination is manifestly wrong, is not supported by substantial and credible evidence, and must be reversed. M.B. 47.

The evidence and testimony presented at the trial of this matter clearly indicated that the excluded area is currently ripe for annexation. As the City of Madison pointed out in its earlier brief, both the City's urban planning expert and the Objectors' urban planning expert agreed that annexation of the excluded area is reasonable. Mr. Lusteck, the Objectors' urban planner, testified that if the proof showed development occurring in Section 31 of the excluded area, annexation would be reasonable. T. 1214. He also testified that Section 32 of the excluded area will be reasonable for annexation upon completion of the Galleria Parkway. T. 1216-17.

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[7] Mayor Hawkins Butler also testified that numerous homeowners that currently reside in the County have sought the City's assistance when dealing with zoning and planning issues affecting their property values. T. 89-90. This demonstrates that County residents outside of the City recognize that the City provides superior zoning and planning.

[8] This classification is based on the enforcement of higher building standards and makes the City eligible for certain FEMA funds for which the County is not eligible. T. 481-82, M.E. 9.

Finally, he testified that Section 33 of the annexation area is accessible from the City of Madison via Highway 51 and via railroad. T. 1217. Mr. Lusteck went on to characterize Section 33 as an area that could be "a nice commercial area." T. 1218.

A review of the relevant evidence shows that the conditions described by Mr. Lusteck are clearly met. First, M.E. 19 shows development occurring immediately adjacent to the excluded portion of Section 31. Furthermore, Mr. Ambrosino testified that he is currently developing property situated in Section 31, as demonstrated by the above-referenced exhibit. T. 847. Indeed, M.E. 73 demonstrates that Galleria Parkway will provide access to Section 32. In fact, Mr. Slaughter testified that the parkway extended beyond the Madison City limits at the time of trial. T. 1255.

The Objectors erroneously assert that the construction of a roadway from the City into the excluded area cannot be evidence of spillover growth or an access route, characterizing the roadway as "a proposed roadway on some developer's map." This assertion is incorrect for numerous reasons. First, the Galleria Parkway is not merely a "proposed roadway." As mentioned above, at the time of trial, a portion of the parkway was complete and extended beyond the City limits. T. 1255. The remainder of the parkway was under construction at the time of trial. M.E. 73, T. 104, 1255. As clearly demonstrated on M.E. 73, the portion of the Galleria Parkway that was under construction at the time of the trial goes through a portion of Section 31 (most of which was excluded) and continues into excluded Section 32. Indeed, the construction of the Galleria Parkway in the excluded area is clearly visible from I-55 North to the east of the interstate. Second, a parkway that was under construction was cited as evidence that the area within the PAA was in the City of Madison's path of growth in the 1995 *Madison* decision. In that case, this Court cited "construction of the new parkway just west of the existing

city" as evidence of the City of Madison's path of growth to the west. *Madison,* 650 So. 2d at 497.

Finally, the amicus brief filed by St. Dominic acknowledges the fact that there is development in and access to the excluded area. That brief states that "there is, indeed, ongoing development in [the] area." A.B. 2. The brief goes on to cite the construction of Parkway East[9] to the northern boundary of the Galleria Parkway as evidence of ongoing development in the area. A.B. 2. This construction demonstrates both development and access. In addition, the brief expresses St. Dominic's intent to undertake further development in the excluded area.[10]

The above-cited evidence leads to only one conclusion. The chancellor's determination that the excluded area should not be annexed because of a lack of development and access roads is manifestly wrong and is not supported by substantial and credible evidence.

III. RESPONSE TO PORTIONS OF OBJECTORS' ARGUMENT IN REPLY IMPACTING THE CITY OF MADISON'S CROSS-APPEAL[11]

The Objectors' Argument in Reply begins with an eighteen page tirade which asserts that annexed residents will receive only "speculative" benefits; thus, annexation is not reasonable.[12] The Objectors' argument is not only incorrect, it contains outright misrepresentations of the Record that is before this Court.

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[9] As M.E. 73 demonstrates, Galleria Parkway and Parkway East are the same road.

[10] The Objectors' statement that "the hospital may or may not ever be built", C.B. 26, implies that a landowner's intent to develop property is too speculative to weigh in favor of annexation. However, in the 1995 *Madison* decision, this Court cited a developer's "**intent** to develop [a] parcel of land . . . ." as evidence supporting Madison's annexation. *See Madison*, 650 So. 2d at 497. (emphasis added).

[11] The referenced section of the Appellants' Combined Reply Brief on Direct Appeal and Answering Brief on Cross-Appeal contains numerous statements, arguments, and mischaracterizations that by their very nature impact the City of Madison's Cross-Appeal. The City of Madison will respond to these portions of the brief only to the extent that they have an impact on the Cross-Appeal.

[12] This argument definitely impacts the City of Madison's Cross-Appeal, as this Court will ultimately consider the impact of annexation upon residents in the excluded area.

A. The City of Madison's Superior Zoning, Planning, and Building Scheme

The "Planning and Zoning" portion of the Objectors' Argument in Reply asserts that the City's zoning and planning ordinances are not better than the County's. C.B. 3. As part of their effort to undermine the City's zoning, planning, and building scheme record, they say "there is no evidence that the County's zoning and planning is inferior to the City's." C.B. 4.

As set forth in detail in the Brief of Appellee/Cross-Appellant, there is an abundance of evidence that the City's zoning and planning scheme is, in fact, superior to the County's. In April of 2004, the City of Madison adopted the most up-to-date codes that are available. The City currently operates under the 2003 International Building Code, the 2003 International Fire Code, the 2003 International Residential Code, and the 2003 International Mechanical Code, M.E. 14, 15, T. 89, 559, 790-91, while the County currently either operates under the 1997 regional version of these codes, or has no counterpart. M.E. 14, T. 89, 1739-1741. In addition, the City operates under the 2003 National Electric Code, while the County operates under the 1995 version of that code. M.E. 14. As stated above, the codes adopted by the City are superior to those adopted by the County, as the more modern codes take into account technology changes and improvements in construction techniques. T. 560. In addition, numerous City codes require inspectors to receive continuing education in order to maintain their certification, while the County codes do not. T. 561-62, 1744. Furthermore, the City building code requires multifamily residential structures to have sprinkler systems, while the County code does not. T. 561.

Other advantages that the City's planning, zoning, and building scheme has over the County's scheme include: the City has a separate housing code, while the County does not, T. 1741; the City has a landscape ordinance, while the County does not, M.E. 14; the City requires bonding of contractors, while the County does not, M.E. 14; the City has a swimming pool code,

while the County does not; M.E. 14; the City has a separate sign ordinance, while the County does not, T. 842; the City has a green space requirement for commercial property, while the County does not, T. 843; the City has a separate stormwater management ordinance, while the County does not; T. 787-88, 1739; the City has a Standard Excavation and Grading Code, while the County does not, T. 1740-41; the City has a Standard Unsafe Building Abatement Code, while the County does not, T. 1742; the City has two certified fire inspectors, while the County has none, T. 1743; and the City places more zoning restrictions on adult entertainment than the County does. T. 843. So much for the Objectors' "no evidence" claim.

In addition to the numerous advantages listed above, the City is known for paying attention to detail when it comes to zoning, planning, and building. The Objectors' urban planning expert took notice of this fact in the previous Madison annexation, when he "testified that Madison's approach to planning and zoning provided more detail, control, and participation that that available through the Madison County program." *See Madison*, 650 So. 2d at 501. As mentioned above, Mr. Ambrosino testified that the City's building requirements are more detailed than the County's, T. 853-54, and St. Dominic's argues in its amicus brief that the County cannot provide the same level of enforcement as the City. A.B. 3.

Madison County, on the other hand, doesn't pay enough attention to zoning and planning detail to be an effective municipal level regulator. Example: its updated zoning ordinance was adopted on October 24, 2005, but was not signed until January 17, 2006. T. 1723-24, O.E. 48. Its zoning map contains zone depictions that do not exist under the updated version of the ordinance because the map was not updated to correspond with the ordinance. T. 1728-29, 1732. The County zoning administrator, in fact, admitted that the County did not even publish notice of the changes that were made to the map. T. 1729.

During the trial of this matter, he agreed that taking care of technical matters and paying attention to detail is important in the effective enforcement of zoning matters. T. 1730. He also agreed that a zoning ordinance is essentially irrelevant if the ordinance is not enforced. T. 1730-31. These admissions establish that the City of Madison's attention to detail provides a distinct advantage over the County's haphazard zoning and enforcement scheme.

This comparison demonstrates that Madison's zoning, planning, and building code scheme's superiority over that of the County's is more than "conclusory hooey concocted by lawyers." C.B. 4. Any contention to the contrary is disingenuous and incorrect.

The Objectors' obstinate insistence on the adequacy of the County's zoning ordinance, building codes and enforcement procedures leads squarely to Objectors' "snide and snarky remarks" and "trivial unpleasantness" language in its brief. C.B. 4. It is not trivial when a County official is forced to return to Court to admit his prior sworn testimony that an apartment complex is equipped with a sprinkler because the County building code calls for it is, in fact, inaccurate. T. 1775. It is not "trivial" for the Objectors to offer evidence to the trial court that the County's zoning ordinance is equal to the City of Madison's, only to have the court learn on cross-examination that the County's zoning maps utilized by the public for doing business do not, in fact, correspond with the zoning ordinance itself. T. 1728-29, 1732.

These problems with the evidence are particularly not "trivial" when they were offered up by the Objectors to mislead the trial court into believing that there was equality of zoning ordinances, building codes and code enforcement between the County and the City when the evidence clearly demonstrated that the inequality was and is like night and day. The Objectors have no one to blame but themselves for any "unpleasantness", C.B. 4, that results from their failed effort to overstate the County's zoning and code enforcement capabilities. They have no one to blame but themselves for leading the County officials involved to embarrassment by

trying to portray the County zoning codes and enforcement as something more than what they were and are.

The City does not apologize for bringing these "unpleasant" truths to the attention of the lower court and this Court. However "unpleasant" they may be, they are part of the undisputed Record in this case.

B. The City of Madison's Traffic Improvement Plan

The Objectors make much of the $250,000 that the City plans to spend on traffic improvements within the PAA. They argue that the City's alleged silence on the issue stands as an admission that residents of the PAA will receive little in the way of road services as a result of annexation. C.B. 7. This argument is flawed for numerous reasons.

The Objectors' contention that the City has been silent on the issue of road services is another misrepresentation of the Record. The City does, in fact, address the money allocated for "overlay[ing] existing roads and/or build[ing] new roads and/or drainage and/or other infrastructure improvements" in the Brief of Appellee/Cross-Appellant. M.B. 30-31.

Despite the Objectors' contention that annexed residents will not receive any benefit from the road services planned by the City, the City official with the knowledge needed to address the adequacy of the City's plan testified that the plan is sufficient. The City of Madison's public works and public works administration expert testified that the amount of money the City plans to dedicate to traffic improvement in the PAA will allow the City to take care of the streets in the area. T. 1169-70. He went on to explain that someone who does not understand how the process of improving streets works may not understand how the City's plan will suffice, but the plan will work. T. 1169-70.

Finally, it is important to note that the Objectors' concern is based upon an amount of money that will be provided only in the first year following annexation. M.E. 121, p. 9. The

City's plan leaves open the distinct probability that more money will be allocated to improving streets in the PAA in the following years.

C. The City of Madison's Superior Police Protection

The Objectors imply that the only thing PAA residents stand to gain in the way of police protection following annexation is the presence of speed control radar. C.B. 7-9. Once again, this assertion is not supported by the facts. The most important benefit that PAA residents will gain in the way of police protection is a much stronger police presence within the PAA. Chief Waldrop testified that as of September 15, 2005, the City of Madison employed 2.92 police officers for every 1,000 City residents, while the County employed 0.61 officers for every 1,000 residents. T. 386-87. The chief also testified that as of that date, the City had 3.56 officers per square mile, while the County had 0.07. T. 387. The impact of this testimony cannot be ignored. It is indisputable that the City of Madison offers a higher level of police presence to its residents than the County provides to its residents. Increased police presence is invaluable, as it undoubtedly results in quicker response time to calls for police assistance.[13]

Another benefit PAA residents will receive following annexation is a unique program called "Home Watch." Under this program, a City resident that plans to be away from his home can contact the Madison Police Department, and the department will send an officer during each shift to check on the home to make sure the premises and property is secure. T. 379. Chief Waldrop testified that this program serves to deter property crime within the City. T. 379-80.[14]

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[13] In its 1995 *Madison* decision, this Court cited "quicker police response time to the proposed annexation area" as evidence supporting annexation. *Madison*, 650 So. 2d at 502.

[14] PAA residents will also receive the benefit of the City of Madison's beat plan, which is specifically designed to police the existing City as well as the PAA. T. 411-12, M.E. 77. Finally, PAA residents will benefit from the City's motorcycle patrol. These officers serve as accident investigators, thus allowing regular patrol units to function in their normal capacity without having to investigate traffic accidents. T. 412-13. They also handle funeral escorts and other special events, thus allowing regular patrol units to dedicate their time to the performance of their normal duties. Madison County has no motorcycle patrol. T. 413.

The Objectors attempt to diminish the importance of the speed control radar used within the City of Madison by asserting that the City has been unable to control speeding within the existing City; therefore, it will be unable to solve the problem in the PAA. C.B. 8-9. This argument is nothing more than an attempt to distract the Court from the real issues: whether the PAA has a speed control problem, and whether the County has the capacity to address the problem. These issues can be resolved in short order. The evidence demonstrated that there is a speed control problem in the PAA, and the County does not employ speed radar devices, while the City does. T. 403-408, M.E. 74. Furthermore, in *Enlargement and Extension of Municipal Boundaries of the City of Southaven*, 864 So. 2d 912, 924 (Miss. 2003) ("*Southaven*"), this Court cited the ability to use radar to control speeding in the PAA as evidence weighing in favor of annexation.

As the Court can see, annexed residents stand to gain a number of invaluable police services from the City of Madison, services which the County does not provide. The services provided by the City belie the Objectors' contention that "the city has little to offer the PAA in this regard." C.B. 9.

D. The City of Madison's Superior Fire Protection

The Objectors begin the "Fire Protection" portion of their Argument in Reply by implying that there is no need for municipal level fire protection in the PAA. (See C.B. 9-10, stating: "The City argues because it is a first-responder to the PAA that this 'demonstrate[s] the PAA's need for municipal-level fire protection. Someone has to be a first-responder everywhere. That there is a first responder logically proves nothing aside from the response."). The Objectors go on to reference a planned County fire station that will only provide day-time coverage, as well as a County fire station at Lake Caroline that is not staffed by trained professionals, as evidence that the PAA does not need municipal level protection. C.B. 11-12.

By the Objectors' own admission, the City's professional fire department is superior to a volunteer unit. C.B. 12. In addition, the fact that the planned County station will only provide day-time protection certainly demonstrates the need for municipal level fire protection within the PAA,[15] unless the Objectors believe that fires do not occur at night. Furthermore, numerous expert witnesses testified that there is in fact a need for municipal level fire protection within the PAA. As stated above, Chief Lariviere testified that the entire PAA is in need of municipal level fire protection, T. 564, while Mr. Slaughter testified to the same effect. T. 1348.

The Objectors contend that PAA residents will gain nothing in the way of fire protection services because the City already responds to fires within the PAA. C.B. 11-12. While it may be true that the City responds to fires within the PAA, even the Objectors' brief admitted that the City is no longer contractually obligated to do so, C.B. 12, as did Chief Lariviere. T. 578-79. In addition, even when there was a contractual agreement for the City to provide fire protection services within the County, the parties to that contract agreed that the City of Madison Fire Department's primary obligation was to City residents. O.E. 84. The contract at issue specifically stated that:

> [i]t is understood by the Madison County Board of Supervisors that the City of Madison Fire Department has a primary responsibility to protect the residents of the city in which it resides. Therefore, the Madison County Board of Supervisors recognizes and agrees that the City of Madison Fire Department shall respond to fires in the areas of the county as manpower and other factors permit.

O.E. 84. The effect of this contract was that residents of the PAA did not have guaranteed first response fire protection even when the City was contractually obligated to provide services in the

[15] In addition, despite the Objectors' statement that the number of responses by the Madison Fire Department is somehow "undercut" by the nature of the calls, C.B. 11, these responses definitely indicate a need for municipal level fire protection services within the PAA. Even if a large number of these calls were for "first-aid and emergency services", C.B. 11, such services are indeed a vital part of what a modern municipal fire department provides. The fact that a large number of requests for these services was made from within the PAA indicates, in and of itself, that the PAA is in need of a municipal fire department.

area; therefore, if the City received a call from a City resident, followed by a call from a PAA resident, the response would be to the City resident. To this date, PAA residents still do not have guaranteed municipal first level fire protection, as the City has no obligation to provide such protection and it can only respond to fires in the PAA, if it chooses to do so, when there is no situation within the City limits requiring immediate attention.

The guarantee of municipal level fire protection is an advantage of annexation that cannot be trivialized. This Court recognized this fact in its 1995 *Madison* decision. In that case, as part of its discussion of the benefits received by PAA residents in exchange for their tax dollars, this Court stated the following: "[i]f taken into the city, residents of the proposed annexation area would receive first level guaranteed fire protection rather than voluntary protection. Without annexation, a fire within the city would be given priority over a fire in the proposed annexation area." *Madison*, 650 So. 2d at 506.

Finally, the Objectors attempt to undermine the impact of the City of Madison's fire rating on base insurance premiums by stating that "the City errs in concluding that its fire rating necessarily results in lower premiums for homeowners." C.B. 10. However, the testimony does not support this statement. Mr. Carr clearly testified that an individual residing in an area with a Class 6 fire rating[16] would be better off, from a base premium standpoint, than an individual residing in an area with a rating of 9 or 10. T. 468.

The Objectors close their "Fire Protection" argument by proudly asserting that "the PAA, even without the City, is not unprotected." C.B. 12. Assuming that the PAA is not "unprotected", it is obvious that a municipal fire department manned by trained professionals and offering twenty-four hour protection is superior to the bare bones protection that the Objectors argue does not leave them "unprotected."

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[16] This Court has cited lower fire ratings as evidence weighing in favor of annexation. *See Southaven*, 864 So. 2d at 924; *see also Madison*, 650 So. 2d at 506.

These facts demonstrate that PAA residents and businesses stand to gain much in the way of fire protection services as a result of annexation.

E. The City of Madison's Superior Garbage and Solid Waste Collection

Once again, the Objectors contend that PAA residents will gain nothing from the City in the way of garbage and solid waste collection services. C.B. 12. However, they must admit that they would receive twice a week garbage collection from the City, as opposed to once a week collection from the County. C.B. 12. Interestingly, in the 1995 *Madison* decision, this Court cited twice a week garbage pick-up as evidence supporting annexation. *Madison*, 650 So. 2d at 502.

The Objectors also admit that there are junk vehicles and exposed appliances within the PAA that have not been removed. C.B. 12. The City's expert in community development and planning and zoning testified that if these conditions existed within the City, City officials would contact the owner of the property and ask him to remove the items in question from the property. T. 795. If, after given an opportunity to do so, the owner fails to comply, the City will then take necessary steps to receive approval from the board of aldermen to go in and remove the items. T. 795. The City's willingness to solve solid waste problems within its borders means that such problems are less likely to exist within the City. The Objectors admit that the County, on the other hand, will not act on its own to solve solid waste problems existing in the PAA, rather it waits until a request is made before acting. *See* C.B. 13 (stating "[d]espite offering solid waste collection and three sites where residents may take such objects, without a request to the County for pickup there will remain objects on the landscape that some find objectionable."). These benefits and increased attention to detail offered by annexation cannot be overlooked.

F. The City of Madison's Plans to Collect Sewage

In the first sentence of the Objectors' "Sewer" argument, they admit that annexation will result in lower sewage rates for PAA residents. C.B. 13. Once again, in the 1995 *Madison* decision, this Court cited decreased sewer rates for PAA residents as a benefit weighing in favor of annexation. *See Madison*, 650 So. 2d at 506. Despite this admission, the Objectors go on to claim that PAA residents will gain nothing in the way of sewage collection, which "is designed to be the principal benefit of annexation" because the City's plans are not viable. C.B. 14-16. The Objectors make an unsupported statement that sewage collection is designed to be the principal benefit of annexation. C.B. 16. The City has no idea where this unsupported statement came from.

Likewise, the contention that the City's plans are not viable is unsupported by the overwhelming weight of the testimony. John Sigman, the City's civil engineering expert testified that it is his opinion that "Option 1" "is a workable plan that would provide adequate sewer service to the proposed annexation area." T. 711-12. When questioned concerning a report indicating that there are capacity problems with the East Madison Interceptor System, Mr. Sigman stated that in his opinion, "there's not enough information in that report to support the conclusions that that report has and that we do not know at this time if there is a capacity problem with that interceptor." T. 711. He went on to state: "I cannot conclude that there's a capacity problem." T. 711.

When questioned about "Option 2", Mr. Sigman stated: "It's my opinion that this is a viable plan and it will work to provide sewer service to the proposed annexation area." T. 720-21. In addition, the Objectors' representation that Mr. Hust, an engineer for the Madison County Wastewater Authority testified that "the Corps had promised funds [for Option 2] and then not

delivered on the promise", C.B. 15, is false. The exact language of the referenced testimony is as follows:

> Q. Okay. Are you -- what is the current status of Corps funding for the projects that you've just mentioned here in the Wastewater Authority?
>
> A. We basically heard verbally from 'em that we do expect to get the $7 million, but we don't have anything in writing or anything more than a verbal commitment.

T. 1800. This testimony makes it clear that Mr. Hust expects to receive funding for "Option 2." The Objectors' purported anxiety over funding for "Option 2" is unfounded.[17]

As the Court can see, there is ample testimony supporting the lower court's conclusion that Madison's sewage collection plans are viable plans that will be beneficial to residents of the PAA. In addition, the Objectors cannot dispute the fact that in the 1995 *Madison* decision, this Court found that annexation was reasonable, and that PAA residents would receive benefits in exchange for their tax dollars, despite the fact that "Madison made no proposal to extend or construct any water or sewer lines . . . ." *See Madison*, 650 So. 2d at 501, 507-08. If annexation by Madison was reasonable when the City offered no proposal to extend sewer lines into the PAA, there is little room for doubt that an annexation plan which provides two viable options for sewage collection is reasonable. The chancellor found that both options offered by Madison are viable, C.P. 680, and this conclusion must be accepted unless it is manifestly wrong. *See Madison*, 650 So. 2d at 495.

[17] As for the Objectors' representation of the content of Mr. Wallace's testimony, *see* C.B. 15., the City can make neither heads nor tails of the statement that "Wallace said that if the money did actual [sic] appear it had already been allocated to other pending projects." (citing T. 1765). The City has reviewed the referenced page of testimony and does not find such a statement by Mr. Wallace.

G. This Court Has Indicated that it Will Continue to Apply its Established Indicia of Reasonableness to Determine if Annexation Is Reasonable Under Mississippi Law.

In their principal brief, the Objectors cited a North Carolina annexation statute in support of their contention that the PAA is "insufficiently dense to benefit from municipal-level services or regulation." O.B. 30-33. After the filing of that brief, this Court rejected the invitation, by the same counsel, to graft North Carolina law into Mississippi reasonableness jurisprudence, stating: "[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." *Enlarging, Extending, & Defining Corp. Limits of the City of Brookhaven*, 957 So. 2d 382, 390 (Miss. 2007).

Now the Objectors have decided that they like Virginia law, and therefore urge this Court to adopt yet another state's scheme. C.B. 17-18. As was the case in *Brookhaven*, while the Virginia legislature may have adopted a specific statutory scheme, the City trusts that this Court remains committed to Mississippi's well-established indicia of reasonableness.

H. The Growth in and Around the City of Madison Is Clearly Attributable to the City's Efforts.

The most preposterous argument asserted by the Objectors is that "it must be said that Madison owes its increasing population to nothing that has happened within its borders." C.B. 19. The Objectors claim that the City of Madison's growth is attributable solely to its proximity to Jackson. C.B. 19. Like most cities surrounding Jackson, Madison certainly benefits from its proximity to the capitol. But the assertion that Madison has done nothing to create its growth totally ignores the undisputed evidence, and misquoting Mayor Hawkins Butler, C.B. 19, does not change the fact that not a single witness testified that "Madison owes its increasing population to nothing that has happened within its borders."

Indeed, developers with significant capital investments in Madison and the PAA testified that they want their property to be in the City precisely because of what the City has done in the area. Mr. Brata testified that he wants his property to be annexed "because the City of Madison zoning enhances property values" and the City's "police and fire protection is positive." T. 629-30. Mr. Ambrosino testified that he wants his property to be part of the City because of the increased police protection. T. 849. He also testified that he wants his property in the City because of the increased property values there, which he attributed "to the City of Madison's actions." T. 850. Mr. H.C. Bailey, a principal in the development of Reunion, testified that his group wants Reunion in the City because "for the long-term benefit of property values and quality of life, you need a good, strong municipality or City to . . . operate the services and the functions of a development. . . ." T. 950. He went on to testify that he favors annexation because "the City of Madison has demonstrated excellent leadership and has created a good quality of life that has contributed to significant increase in property values." T. 950. Finally, as noted above, St. Dominic wants its hospital in the City because, *inter alia*, "the City has the ability to provide municipal level services and enforce its strict zoning ordinance and other codes . . . ." A.B. 3. So much for the Objectors' "nothing that has happened within its borders" argument.

In another unsupported statement that appears to have no legal or evidentiary purpose whatsoever, the Objectors vent the animus of some Objectors by stating that "Madison barely constitutes a town at all." C.B. 20. Madison agrees that is not a town. *See* MISS. CODE ANN. § 21-1-1 (West 2007) (mandating that municipalities "having two thousand inhabitants or more shall be classified as cities; those having less than two thousand and not less than three hundred inhabitants shall be classified as towns . . . ."). Moreover, if Madison is not a real City, someone forgot to tell Money Magazine (recognizing Madison as one of the top 100 cities in America),

Peachtree Publishers (recognizing Madison as one of the top 50 small southern cities), and the State of Mississippi (recognizing Madison as the most livable City in the state). T. 59. Once again, the Objectors substitute animus for accuracy.

IV. CONCLUSION

The City of Madison had an estimated population in 2004 of 16,462 people. T. 1242. This annexation, if approved in its entirety, will add 5,924 citizens. T. 1244. Only 204 people in the annexed area raised objections to the annexation. T. 5-49. Not a single City of Madison resident, property owner, or business within the City limits of Madison objected to or testified against the annexation. Nor did any such person criticize any aspect of Madison, the City's municipal operations or past performance. Not one. Enough said.

The annexation decision should be affirmed on Appeal and reversed and rendered on Cross-Appeal.

Respectfully submitted, this the 14th day of November, 2007.

CITY OF MADISON, MISSISSIPPI

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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.
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THIS the 14th day of November, 2007.

James L. Carroll