IN THE SUPREME COURT OF MISSISSIPPI
CASE NO. 2007-CA-01547

CITY OF LAUREL, MISSISSIPPI **APPELLANT**

VS.

SHARON WATERWORKS ASSOCIATION, ET AL. **APPELLEES**

Appeal from the Chancery Court of Jones County, Mississippi
Cause No. 97,0498

BRIEF OF THE APPELLEE

Oral Argument Not Requested

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CERTIFICATE OF INTERESTED PERSONS

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

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Respectfully submitted this the 21st day of May, 2008.

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Joey Fillingane

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I. INTRODUCTION

This case involves an appeal from the Second Judicial District of the Chancery Court of Jones County in which the City of Laurel, Mississippi, ("The City" or "The City of Laurel") petitioned to annex three parcels of land located in Jones County, Mississippi. The City's petition proposed three areas to be added to the City known as the Northern Parcel, the Southern Parcel and the Western Parcel. The Chancellor further described the parcels as the (1) Pendorff area (Southern Parcel), (2) the Western Parcel (or Sports Complex area), (3) the Shady Grove Parcel (Northern Parcel) and (4) the Sharon Parcel (Northern Parcel). The Chancery Court granted the annexation as to the land known as the Pendorff area only.

On June 18, 1997, the City filed a complaint in the nature of a petition to ratify and confirm the extension of its boundaries in the Chancery Court of Jones County, Mississippi. Honorable R. B. Reeves, Jr., senior status judge appointed to hear the case, issued a decision by letter dated January 28, 2000, to the parties that the House Bill (HB) 1730 Regular Session 1996, was constitutional, and did not violate Section 88 of the Mississippi Constitution of 1890, and that the City had 20 days to amend its complaint to comply to the provisions of Section 12 of HB 1730. A notice of claim of unconstitutionality of a certain local and private act was provided by the City of Laurel to the Attorney General of Mississippi. The Attorney General filed a notice of intervention to defend the constitutionality of relevant statutes and joinder in memorandum in response to the City of Laurel's claim of unconstitutionality of certain local and private act. See Miss. R. Div. P. 24(d). No interlocutory appeal was sought. Judge Reeves did not issue an order as to the constitutionality of House Bill 1730. The City later amended its complaint to comply with HB 1730. HB 1730 states:

> None of the territory lying within the district shall be subject to an Annexation by any city, town or village unless all of the territory of the district is annexed, in which event the city, town or village shall assume the operation and maintenance

of the facilities of the district with respect to the payment of any outstanding bonds of the district and all other contractual obligations of the district.

Therefore, HB 1730 required that either all or none of the land in the district be annexed. Consequently, the City added the remaining portion of the Shady Grove Utility District located in the Northern Parcel which increased the size of the original proposed annexation area (PAA). Thereafter on February 9, 2001, the City filed a second amended complaint. The case was heard before Judge Reeves, between June 19, 2001 and January 4, 2002. The Chancellor filed his opinion on March 20, 2002. In his opinion the Chancellor determined that the annexation of the Pendorff area, in the Southern Parcel, was reasonable under the totality of the circumstances. However, the annexation of the other areas was not reasonable. On May 30, 2003, the Chancellor signed a final judgment approving the enlargement and extension of the boundaries of the City of Laurel as to the Pendorff area only. Following the final judgment and these proceedings, the City appealed to the Mississippi Supreme Court.

The Mississippi Supreme Court vacated the Chancellor's judgment and remanded the case for the Chancellor to clarify his findings regarding the annexation. The Chancellor's Order did not specifically distinguish between all the parcels of the PAA and did not provide enough basis for his ruling concerning whether a specific area should be annexed. The Supreme Court found that the Chancellor's order was vague and ambiguous. It did not set out a clear basis explaining why a particular parcel should or should not be annexed. The Supreme Court found that a few of the indicia of reasonableness did have sufficient information, but as a whole, there was not enough information concerning the twelve indicia of reasonableness to make an informed determination.

After the Mississippi Supreme Court issued their opinion, the Honorable R. B. Reeves, Jr.; recused himself from hearing anything further on the case. The Mississippi Supreme Court

then appointed another special chancellor, Chancellor Charles Thomas of Pontotoc County, Mississippi, to hear the remanded case.

Chancellor Thomas modified the decision of Chancellor Reeves by determining that the annexation of the Western parcel as well as the Pendorff area (to the south of the City) was reasonable to be annexed into the City of Laurel. Chancellor Thomas also determined, as Chancellor Reeves had before him, that none of the Northern area should be added to the City of Laurel. Therefore, none of the Sharon parcel was allowed to be annexed into the City by either of the specially appointed Chancellors. From this decision the City of Laurel has appealed.

II. SUMMARY OF THE ARGUMENT

A. Constitutionality of HB 1730

Chancellor Thomas determined in his hearing on remand of this case that Local and Private Bill HB 1730 was not unconstitutional. Appellee Sharon Waterworks Association ("Sharon objectors") concur. The Sharon objectors, however, are in a unique position in relation to the other set of objectors in that the first and second version of the City of Laurel's proposed annexation plan included the Sharon objector area are not directly impacted by the decision of whether the local and private bill (HB 1730) is or is not determined to be constitutional. Therefore, the Sharon objectors will give cursory argument on behalf of the constitutionality of HB 1730 because it is an important issue and vital to the final outcome of this matter. Nevertheless, the Sharon objectors will assert that the bulk of the argument on this point should be left to the objectors from the Shady Grove Utility District who are affected directly by the outcome of this question.

The City of Laurel argues that HB 1730 is a "poison pill" plot by the State Legislature to hamper the municipality of Laurel in her efforts to expand her boundaries and that this ought not be allowed. The City of Laurel argues that the State Legislature should have much better things

to do with their time than worry about municipal annexations already covered by the code. (Appellant's Brief page 3). The City of Laurel argues that HB 1730 is in direct violation of ***Article 4, Section 88 of the Mississippi Constitution of 1890.*** (Id.) The Constitution provides:

> The Legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

Article 4, Section 88 of the Mississippi Constitution of 1890.

Sharon objectors would disagree with the City's analysis as to what Section 88 prohibits and what it does not prohibit. The City cites ***City of Pascagoula v. Krebs***, 118 So. 286, 151 Miss. 676, (Miss. 1928), for support of its argument that Section 88 of the Mississippi Constitution would make HB 1730 a "poison pill", however, upon reading the case in its fullness and context, such an erroneous conclusion cannot be made. In ***City of Pascagoula***, the Supreme Court was determining whether the City of Pascagoula, having attempted to increase their territory earlier by a consolidation with the City of Scranton and having failed to do so correctly because of an erroneous legal description and other problems with their consolidation, could rectify their problems by getting the Mississippi Legislature to pass a local and private bill that would correctly define the territorial boundaries of the City of Pascagoula. ***Id.* at 691.** This is a much different argument than the one in the instant case. The City of Laurel's conclusions about the meaning of ***City of Pascagoula, Id.* at 692,** are therefore erroneous and not analogous to the present case.

B. Reasonableness

The Sharon Objectors believe that both Special Chancellor Reeves originally and now Special Chancellor Thomas were correct as to their collective findings of the unreasonableness of including the Sharon Objector area into the City of Laurel at this time. The Sharon Objectors

continue to believe that the facts mitigate in favor of leaving the Sharon Objector area out of the municipality. We will cite the specific reasons under the individual indicia of reasonableness in the Argument section of this brief hereinbelow.

III. ARGUMENT

A. CONSTITUTIONALITY OF HB 1730

Chancellor Thomas determined in his hearing on remand of this case that Local and Private Bill HB 1730 was constitutional. Appellee, Sharon Waterworks Association, ("Sharon objectors") concurs. The City of Laurel argues that HB 1730 is a "poison pill" plot by the State Legislature to hamper the municipality of Laurel in her efforts to expand her boundaries and that this ought not be allowed. The City of Laurel argues that the State Legislature should have much better things to do with their time than worry about municipal annexations already covered by the code. (Appellant's Br. Page 3). The City of Laurel argues that HB 1730 is in direct violation of ***Article 4, Section 88 of the Mississippi Constitution of 1890.*** (Id.) The Constitution provides:

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This Honorable Court held in ***City of Pascagoula***, that:

> The act of 1912, (local and private bill) in undertaking to validate and breathe life into a dead, inanimate ordinance of Pascagoula, is abortive and void, for the reason that the extension of corporate limits is a charter power. In fact, the most necessary requisite to the grant of a municipal charter is that there shall be a designated area inhabited or populated by human beings. The proposed extension and consolidation were amendments to the charter of the city of Pascagoula.

Id.

In the ***City of Pascagoula*** case this Court held that Section 88 of the Mississippi Constitution was violated because the local and private bill specifically attempted to do what was required to be done by general statute: designate the area whereby the city may be chartered or where its charter may be amended. The local and private bill in the ***City of Pascagoula*** case literally contained a legal description which sought to extend the boundaries of the City of Pascagoula. This cannot be done by local and private legislation and so this Court found. ***Id.* at 692.** The Court held:

> As we have said, this proposed extension was by an amendment of the charter of Pascagoula, and was a special law; no such authority being given any other municipality. To hold that this act is valid as being curative would be to ignore section 88 of the Constitution. This we decline to do. We cannot lend our approval to the passage by the legislature of local acts to amend charters of municipalities so long as section 88 remains in the Constitution . . . . It could not be, because the legislature could not pass an act defining the boundaries of Pascagoula by a local act. The authority to amend the charter must be given by a general act.

Id.

The Appellant, City of Laurel, also cites the case of ***Yazoo City v. Lightcap***, 82 Miss 148, 33 So. 949 (1903) in their brief (Appellant's Brief page 6) for the proposition that "Section 88 requires the passage of uniform general laws prescribing the mode by which municipal charters are to be granted and amended as opposed to requiring that such laws contain the entire contents of the amendment." The Sharon Objectors could not agree more with this limited proposition. In fact, the Mississippi Supreme Court more fully stated in ***Yazoo City***, the following with regard to what Section 88 requires:

> The truth is not only that the framers of the constitution never intended the charters of municipalities to be uniform in their contents, but that it would have been exceedingly unwise to have made any such provision. There was a uniformity intended to be secured, but that was uniformity only as to the general mode of granting and amending charters. It was thought far more convenient, as ridding the legislature of useless special applications for such charters and their amendments, and as securing for the public service far more important legislation, the time that had theretofore been uselessly consumed in the consideration of such special application, to direct that thereafter – that is to say, after the adoption of said section 88 – the legislature should provide a general law prescribing a uniform mode, in conformity with which municipal charters should be granted and amended.

Id. at 32 Miss. 175.

What the Sharon Objectors believe this Court was stating in ***Yazoo City*** was that general laws were to be established by the Mississippi Legislature which would provide a uniform method whereby municipal charters could be both initially granted and amended once granted. The Mississippi Legislature has done that. Mississippi Code Sections 21-1-13 through 21-1-27 is the embodiment of the charge that Section 88 laid at the feet of the State Legislature. These aforementioned code sections provide the method and manner by which unincorporated areas can become incorporated into a municipality or whereby an incorporated municipality may seek to expand their area through the annexation process. What the City of Laurel claims is that HB 1730 is a local and private bill that alters the uniform method by which the City of Laurel may annex additional territory. This is simply not the case. HB 1730 simply maintains that if the

City of Laurel seeks to annex a portion of the area detailed in HB 1730, it must decide whether to annex all of it or none of it. That does not alter the method detailed in Mississippi Code Section 21-1-27. Quoting from Mississippi Code Section 21-1-27: ". . . In the event the municipality desires to enlarge such boundaries, such ordinance shall in general terms describe the proposed improvements to be made in the annexed territory, the manner and extent of such improvements, and the approximate time within which such improvements are to be made; such ordinance shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory. . . ." Nothing in HB 1730 alters anything required by the statute quoted above dealing with the manner in which a municipality goes about annexing territory.

The Sharon Objectors would point this Honorable Court to the portion of Special Chancellor Thomas' order where he dealt with this question. We believe he got it exactly right on this point:

> The Legislature created the Shady Grove Utility District and provided for its continued existence by providing that all of the district could be annexed. The Legislature sought to ensure the district's vitality could not be put at risk by the annexing of only part of the district thereby placing in question the existence and vitality of its remainder.
>
> The adoption of HB 1730 did not change the procedures for annexation contained in Title 21, Chapter 1 of the Mississippi Code of 1972. Neither did the enactment of HB 1730 change the charter of the city of Laurel, change the manner or procedures through which it operates, or destroy the power of the city of Laurel to enlarge its boundaries through its annexation. Section 12 of HB 1730 only established a requirement that must be met before a utility district, a public entity, can be annexed thereby providing certain protection for a legislatively authorized utility district. It simply recognized the need to maintain the financial integrity of the Shady Gove district in view of the uncertainty of any portion that might not be annexed and thereby restricted the exercise of the city of Laurel's annexation power dependent upon the facts.

(Trial Order pages 4-5).

The Sharon Objectors would echo Special Chancellor Thomas when he states, "Section 88 cannot be construed to mean that if one city in Mississippi can freely attempt to annex a small portion of land to its north that, therefore, the local and private law restricting the city of Laurel from annexing a small portion of land to its north is unconstitutional. Section 88 does not guarantee that the circumstances for annexation will be the same for each city in Mississippi." (Trial Judge's Final Judgment Order at Page 6). Special Chancellor Thomas cites ***Feemster v. City of Tupelo***, 121 Miss. 733, 83 So. 804 (Miss. 1920) and ***Palmertree v. Garrard,*** 207 Miss. 796, 43 So.2d 381 (Miss. 1949) for authority on this point. ***Id.*** In ***Palmertree***, the case involved a, ". . . suit for injunction against the commissioners of the municipal Water and Electric Light Commission of the City of Greenwood, acting under appointment under authority of Code 1942, Sections 3524-3531. The prayer of the bill is for injunction against putting into effect the disability and pension system for its employees as authorized by House Bill 27 of the Extraordinary Session of 1947." ***Palmertree v. Garrard***, 207 Miss. 803 (Miss. 1949). There the Mississippi Supreme Court held that Section 88 was not violated in this instance by the local and private law which under the City of Laurel's analysis would have rendered it violative of Section 88 because it treats one municipality differently from others. The Mississippi Supreme Court concluded, "We do not find that the burden of showing unconstitutionality has been met nor that it was outside the competence of the Legislature to authorize the appellants to establish a proper system applicable to the employees of the Electric Light and Water Works of the City of Greenwood." ***Id.*** at 805-806.

The Mississippi Supreme Court in ***Feemster v. City of Tupelo***, 121 Miss. 733, 83 So. 804 (Miss. 1920) dealt with a controversy wherein the Legislature in 1918 enabled the City of Tupelo to issue bonds in an amount not to exceed fifty thousand dollars ($50,000.00), exclusive of all bonds issued prior by law for the purposes of raising funds for the construction and equipment of

a hospital to be located in Tupelo. ***Id.*** The Appellant in that case sued for an injunction to keep Tupelo from issuing the bonds claiming that the enacting legislation was unconstitutional and void as violating sections 80, 87 and 88 of the state Constitution. ***Id.*** at 805. It was argued that the enacting legislation (a local and private bill) was prohibited by the sections of the Constitution above referenced (section 88 among them). ***Id.*** The Mississippi Supreme Court rejected said argument flatly and held:

> As we construe the law, section 2 is a legislative regulation of the exercise of corporate power, which limitation may be raised or lowered by the Legislature without destroying the charter power conferred in other sections referred to. The exercise of the power may be lawfully made to depend upon conditions, and, while this regulation may limit the power in a particular case, the power is not destroyed, and it is not in a legal sense an amendment of the charter powers, though it has the effect of restricting the exercises of the power; the exercise of the power in such cases being dependent upon acts, and not the law.

Id. at 805-806.

As in ***Feemster***, the Sharon Objectors would contend that just because there is land to the north of the City of Laurel that should they City of Laurel choose to annex, it must annex the entire area or none of it; that is not violative of Section 88 of the Mississippi Constitution. It does not change the City of Laurel's municipal charter, nor does it alter the method prescribed by general law whereby the City of Laurel may annex additional property. They may still annex the land to the north of the current city. The method has not changed as designed by the general annexation statute in place. To argue that the Mississippi Legislature cannot create via local and private legislation a condition of keeping all of the property in the Shady Grove Utility District united (either all inside the City or all outside the City) would be contrary to the inherent powers the Legislature has to protect the financial integrity of the utility district.

It is true that this Honorable Court has recognized that annexation is a legislative prerogative, not a judicial one. ***Matter of the Boundaries of the City of Jackson***, 551 So.2d 861, 863 (Miss. 1989). There the Supreme Court ruled, "Annexation is a legislative affair. The

judicial function is limited to the question whether the annexation is reasonable." *Id.* at 863. Having previously determined that annexation is a purely legislative affair, it seems nonsensical that the State Legislature would not be able to craft a local and private law that while not dealing directly with the method of amending a municipal charter would not be able at the very least to place a requirement on a certain area of property to be all included or all excluded from a municipality. This argument is the one being put forth by the City of Laurel, and one that both Special Chancellors in this case have rejected. The Sharon Objectors urge this Honorable Court to affirm the lower court's finding that HB 1730 is constitutional.

B. REASONABLENESS

1. Was Special Chancellor Thomas' Ruling Manifestly Wrong in Finding that the Annexation by the City of Laurel of the Sharon Objectors' Parcel/Area was Unreasonable?

The State Supreme Court in their opinion of August 11, 2005, determined that the first special chancellor's, Chancellor R. B. Reeves, Jr., ruling was not sufficient for the Court to affirm or reverse due to some deficiencies within that ruling. This Court held,

> We vacate the chancellor's judgment and remand this case for the chancellor to clarify. The Chancellor's order does not specifically distinguish his findings regarding the annexation between all the parcels of the PAA and provide enough basis for his ruling concerning whether a specific area should be annexed. In other words, the chancellor's ruling was vague and ambiguous. It did not set out a clear basis explaining why a particular parcel should or should not be annexed. A few of the indicia of reasonableness do have sufficient information, but as a whole, there is not enough information concerning the twelve indicia of reasonableness.

In the Matter of the Extension of the Boundaries of the City of Laurel, Mississippi v. Sharon Waterworks Association, 2003-AN-01368-SCT (Paragraph 3-4).

Special Chancellor Thomas has sought to write his order so that the aforementioned deficiencies have been alleviated and so that this Honorable Court can make a full and final determination as to this matter. This Court has repeated often the standard of review in this type of case is manifest error. ***In the Matter of the Enlargement and Extension of the Boundaries***

of the City of Macon, Mississippi, v. City of Macon, 854 So.2d 1029 (Miss. 2003). In ***City of Macon***, this Court held, "Where the finding of reasonableness is challenged on appeal, this Court conducts no plenary review. It may reverse where – and only 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." ***Id.*** at 1034. See also ***In re Enlargement and Extension of Municipal Boundaries of City of Biloxi,*** 744 So.2d 270, 277 (Miss. 1999) (citing ***McElhaney v. City of Horn Lake,*** 501 So.2d 401, 403 (Miss. 1987); ***Extension of Boundaries of City of Moss Point v. Sherman***, 492 So.2d 289, 290 (Miss. 1986); ***Enlargement of Boundaries of Yazoo City v. City of Yazoo City,*** 452 So.2d 837, 838 (Miss. 1984); ***In re Extension of Boundaries of City of Clinton***, 450 So.2d 85, 89 (Miss. 1984)). "Where there is conflicting credible evidence, we defer to the findings below." ***In re Extension of the Boundaries of Batesville, Panola County,*** 760 So.2d 697, 699 (Miss. 2000), (quoting ***Bassett v. Town of Taylorsville,*** 542 So.2d 918, 921 (Miss. 1989)).

When looking at the Special Chancellor's ruling in light of the standard or review, it becomes apparent that there is no manifest error in the Special Chancellor's order. He goes through each and every indicium of reasonableness recognized by this Court and carefully points out the reasons for his holding under each indicium. There are a few of the indicia that Special Chancellor Thomas ruled were favorable for the City of Laurel's case to annex the Sharon Objector area, but even on most of those the Special Chancellor stated they "weakly" weighed in favor of the annexation. However, the majority of the indicia with respect to the Sharon Objector area, the Special Chancellor ruled were not favorable for the City of Laurel's annexation case and mitigated against approving the annexation. The remainder of this brief will be broken into the different court-recognized indicia of reasonableness and will speak to what the Special Chancellor ruled as to that specific indicium of reasonableness to the proposed

annexation of just the Sharon Objector area and how the Sharon Objectors believe that decision squares with the law and facts.

1. Need for Expansion

Special Chancellor Thomas spent much time and space going into great detail about his decision regarding the ***City of Macon*** factors which deal with the first indicium of reasonableness, "Need for Expansion". The Mississippi Supreme Court in, ***In the Matter of the Enlargement and Extension of the Boundaries of the City of Macon v. City of Macon***, 854 So.2d 1029, 1035 (Miss. 2003), set out a list of factors that Chancellors may consider when determining whether a city seeking to enlarge their territory has a reasonable need for expansion. They are: (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 development 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. ***Id.*** See also ***In re Enlargement and Extension of Mun. Boundaries of the City of Biloxi,*** 744 So.2d at 279, ***Matter of Enlargement and Extension of the Mun. Boundaries of the City of Jackson***, 691 So.2d 978, 980 (Miss. 1997); ***Extension of Boundaries of City of Ridgeland v. City of Ridgeland,*** 651 So.2d 548, 552, (Miss. 1995); ***Matter of Extension of Boundaries of City of Columbus***, 644 So.2d 1168, 1173 (Miss. 1994).

a. Spillover Growth

The Special Chancellor found it significant in reviewing this factor that Susan Vincent (then Mayor of Laurel) testified at trial that there was little development into the Sharon parcel and that she was aware of no new subdivisions that had been planned or begun in the Sharon

parcel. (Trial Order page 13, Trial Transcript page 521). Further the Special Chancellor cited Mayor Vincent's testimony where she stated she was also not aware of any utility services being offered in the Sharon parcel, unlike in the other proposed annexation areas (hereinafter "PAA"). (Trial Order page 13, Trial Transcript page(s) 401, 404). Chancellor Thomas further pointed with significance to the Mayor's testimony when she testified that unlike some of the other PAA, there had been no previous requests from the Sharon Objector area for voluntary annexation into the City of Laurel which sometimes does occur when development reaches the outskirts of the city and the developers wish to have municipal level services. (Trial Order page 13, Trial Transcript page 404).

Chancellor Thomas pointed to the Mayor's statement in court that when referring to the road leading into the Sharon parcel, she recalled a dearth of spillover commercial development, going so far as testifying that along Fifth Avenue heading north out of Laurel into the Sharon Objector area has been vacant and run down for about ten years. (Trial Order page 13, Trial Transcript page 465). The Special Chancellor then noted in his Order that the City of Laurel's own municipal planning expert witness, Michael Slaughter, testified that there were only two businesses – a flower shop and a little grocery store – in the Sharon parcel sought to be annexed herein by the City of Laurel that would generate any tax revenue. (Trial Order pages 13-14, Trial Transcript page 465). Mr. Slaughter testified, "There's 150 businesses in the annexation area. The larger majority is outside the Sharon area." (Trial Order page 14, Trial Transcripts pages 2139, 2233, 2236). Michael Slaughter reiterated in his testimony what Mayor Vincent had testified to earlier that no one from the Sharon area – developers or otherwise – had asked to to be annexed to get the benefit of the City of Laurel's services and that there were no organized subdivisions currently existing in the Sharon parcel. (Trial Order page 14, Trial Transcript pages 2311, 2204).

Finally, the Special Chancellor observed that the Sharon Objectors' own expert witness, Jim Elliot, testified to the fact that he observed no significant residential development in the Sharon parcel within the two years leading up to the trial, nor did he find any new subdivision activity and only one new warehouse being constructed within the two year span that led up to the annexation trial. (Trial Order page 14, Trial Transcript page 3608). Judge Thomas thought this lack of development called into question the City of Laurel's claim of spillover growth into the Sharon parcel, stating, "As to the ***Macon*** factor of spillover growth, this Special Chancellor finds that there is virtually no spillover growth into the Sharon parcel." (Trial Order page 14). It is also interesting to note that in the Appellant's Brief (page 31) even they cannot quote any information pointing to any "spillover" into the Sharon parcel. It is, therefore, apparent that there is no "spillover" growth from the City of Laurel into the Sharon Objector area.

b. Internal Growth

It is likewise telling that in the Appellant's Brief (page 31) the subject of internal growth is not even argued. It appears clear even to the City of Laurel that the information cited in the Special Chancellor's Order on this factor is complete and adverse to the City of Laurel's case. One expert for the Shady Grove Objectors, Joe Lusteck, testified that based upon his inspections of the City of Laurel there was no need for territorial expansion by the City of Laurel to accommodate additional housing or their negative population growth. (Trial Order page 15, Trial Transcripts pages 3027-3031). The expert further testified that 27.6% of the land within the City of Laurel was not developed; another indication that there is no internal growth of commercial or residential development within the City of Laurel. (Trial Order page 15, Trial Transcripts pages 3027-3031). Special Chancellor Thomas, in answering the City of Laurel's contention that they had a need for more land for commercial development, ruled:

> However, the evidence also indicated that there are many businesses within the City's present boundaries that have closed and are boarded up, that the downtown

area is being revitalized, that other businesses are closing, and that businesses such as Walmart and others have already moved from their former locations which were closer to the outer boundaries of the City toward the more central part of the City. The evidence indicated that there was sufficient land available for commercial development within the present municipal boundaries, that no business or commercial development had sought and was unable to find suitable land within the City.

There has been a numerical decline in manufacturing, retail trade, and wholesale trade from 1977 through 1997. Page(s) 3034 of the Trial Transcript. The number of wholesale trade business declined from 1977 to 1997. Page(s) 3034-3035 of the Trial Transcript. The number of employees in wholesale establishments decreased from a high of 1000 in 1982 to 587 in 1997. Page(s) 3035 of the Trial Transcript. The number of retail establishments declined in each five year period and although the number of employees in that category increased for a while the number started moving back down so that the 1997 number of employees is close to the 1977 number. Although the City has an active downtown there are a lot of vacant store fronts, and there is a nice large shopping area near downtown. Page(s) 3037 of the Trial Transcript.

Special Chancellor Thomas also referred to Joe Lusteck's, the expert for Shady Grove Objectors, testimony about the presence of vacant buildings and vacant land and the redevelopment of the same from the development viewpoint, but that it does not support the need for additional lands in the PAA. (Trial Order page 16, Trial Transcripts pages 3038-3039. The Special Chancellor concluded that the City of Laurel should use the ample amount of vacant land and assets that are available to it within the current city limits instead of seeking annexation of new land in the Sharon parcel. (Trial Order page 16).

c. Population Growth

This factor is very much a problem for the proponents of annexation in the instant case. The problem is significant enough that the City of Laurel admits as much in their defense mounted in their Appellant Brief (pages 31-33). They do not deny the population loss over the past forty years, they merely argue that it is only one factor to be considered and that their population, though still declining during the nineties declined less percentage-wise in the nineties than it had during the previous several decades. This is analogous to saying the disease is still

terminal, but it is progressing more slowly now that it had previously. The result is still the same.

The Special Chancellor was correct to point out that the City of Laurel has endured a continual decline in population for the last forty years despite previous annexations that brought more land and people into the City of Laurel. The population has declined from 27,889 in 1960, to 24,145 in 1970, to 21,897 in 1980, to 18,827 in 1990 and 18,393 in the year 2000. (See L-24). The Special Chancellor correctly cited this Court's decision in ***In the Matter of the Enlargement of the Corporate Boundaries of the City of Gulfport***, 627 So.2d 292, 297 (Miss. 1993), where this Honorable Court held that the lack of growth diminishes the need for expansion. This conclusion is only logical. However, the City of Laurel attempts to equate the situation in ***Prestridge v. City of Petal***, 841 So.2d 1048 (Miss. 2003), and their recent annexation case with that of Laurel's. (Appellant's Brief at page 32-33). Upon closer examination of the facts in ***City of Petal***, one quickly sees the glaring distinction. In ***City of Petal***, you actually had significant commercial and residential growth with new businesses and many new homes and subdivisions building within the city and the PAA. In this case, there is virtually no growth of either commercial or residential developments in the Sharon parcel. This analogy does not work without growth and development within the Sharon parcel which the record shows is not present.

The Special Chancellor also points to the City of Laurel's expert witness in urban planning, Michael Slaughter, who recognized the continued decrease in population within the City of Laurel and who admitted that the construction of the new residential units within the City of Laurel was not enough to say there was a need for expansion. (Trial Order pages 17-18, Trial Transcripts page 1947). He further testified that only 72.4% of the land within the City of Laurel was developed, that the median age of the residents of the City had increased from 26.9 in 1960 to 34.9 in 1990. (Trial Order page 17, Trial Transcripts pages 1714, 1939). Mr. Slaughter

continued in his testimony that the median age of the citizens in the City of Laurel (34.9) was very comparable to the median age of those in the whole of Jones County, Mississippi (33.6), debunking the argument that without this annexation, the young folks would be allowed to move just outside the municipal limits and still work inside the City of Laurel while living outside and avoiding the city taxes while getting the municipal benefits. (Trial Order page 17, Trial Transcripts pages 1940).

Special Chancellor Thomas concludes his remarks about this factor the following way:

> The evidence showed without question the outward flow of population from the city of Laurel and belies any internal growth as well. In Exhibit L-15, "Building Permit Trends, City of Laurel", it is clearly seen that new residential dwelling units being built within the City of Laurel peaked back in 1995 and has been trending downward while new commercial construction has been basically stagnant. This factor does not indicate a need for annexation.

(Trial Order page 17).

d. The City's Need for Development Land

The City of Laurel in their Appellant's Brief argue that other cities have been allowed to annex when they were less built-out than the City of Laurel. (Appellant's Brief pages 33-34). The Special Chancellor, however, was dealing with the City of Laurel and their unique situation, not other cities around the state. In his Order, the Special Chancellor cited several reasons why he did not feel that the City of Laurel had shown that this factor should weigh in favor of annexing the Sharon parcel. First, he pointed to the City of Laurel's own municipal planning expert, Michael Slaughter's, testimony related to the fact that this proposed annexation by the City of Laurel seeks to more than double the size of the existing city (annexing 17 square miles into a city that is currently about 16 square miles in size). See Exhibit L-52. (Trial Order pages 16-17). Mr. Slaughter went on to testify that his study reveals that the City of Laurel is approximately 72.4% developed. See Exhibit L-92. (Trial Order page 18). This leaves 27.6% of land within the City of Laurel that is undeveloped.

What is perhaps more telling on this factor is that an expert of Mr. Slaughter's caliber, who basically makes a living as an expert municipal planner and doing much annexation work had not prepared a land consumption study for his client, the City of Laurel. This is important because it would reveal the rate at which the remaining vacant land was being historically consumed by development (private and commercial). He testified at trial that he had not calculated this land consumption rate. (Trial Order page 18, Trial Transcripts pages 2207-2209). He also testified that population loss and dwelling unit loss does not indicate a need for expansion. (Trial Order page 18, Trial Transcripts page 2202). The City's expert further admitted that he was not aware of any developer in the proposed annexation area that had asked for the services of the City of Laurel. (Trial Order page 18, Trial Transcripts page 2288).

Special Chancellor Thomas referred to the Sharon Objectors' expert, Jim Elliot's, testimony regarding the City of Laurel's need to expand. Mr. Elliot's study of the City of Laurel revealed to him "more than 150 acres" of vacant, usable land for commercial development within the City of Laurel. (Trial Order page 18, Trial Transcripts page3649-3650). It is worth noting also that Chancellor Thomas noted some testimony from the Shady Grove Objectors' expert, Joe Lusteck, speaking positively about some aspects of the City of Laurel which the Special Chancellor summarized as follows:

> Despite the declining population and the declining economy as noted, the City of Laurel has been fairly successful in redeveloping the existing downtown and redevelopment improves the situation. Redevelopment has an impact on attracting adjacent development as shown by the small businesses, restaurants and specialty stores surrounding the shopping mall located within the City. (Page 3056 of the Trial Transcript). This, the City's commercial growth is within its downtown area, and it is reasonable that its focus should be there.

(Trial Order page 19).

A former member of the Laurel City Council also testified in this trial and urged that commercial and residential land was readily available for development, but the problem was that

there was no one seeking to purchase it for development purposes because there was simply no demand for the land in his opinion. (Trial Order pages 19-20, Trial Transcripts page 3432). He further testified that the new development for commercial purposes had taken place either downtown or on Sixteenth Avenue – neither of these in the Sharon parcel. (Trial Order page 20, Trial Transcripts page 3432). He admitted also that there were many pieces of vacant land and many "for sale" signs for commercial property within the current City of Laurel. (Trial Order page 20, Trial Transcripts pages 3423, 3429-3432). The Shady Grove Objectors' expert, Joe Lusteck echoed these same opinions, and concluded that in his expert opinion that while the many "for rent" signs and vacant lots and buildings around the City of Laurel was positive from a development point of view, it did not support the need for additional lands outside the present City of Laurel. (Trial Order page 20, Trial Transcripts pages 3027-3030).

Chancellor Thomas concludes his thoughts on this factor determining that the City of Laurel has not shown adequate proof under this factor for a need to expand into the Sharon parcel as follows:

> Most annexations involve a growth component with significant demand for real estate to accommodate either new population or new economic growth, neither of which is present in this attempt at annexation. Page(s) 3046 of Trial Transcript. The City of Laurel has experienced decline and continues to experience some decline, and the evidence indicates an alternative strategy for redevelopment is available to the City by taking what is no longer being used and put to its highest potential use.
>
> This Special Chancellor considered the City's argument for this factor based on its level of development. This argument is not well-taken in light of the declining population and land available for new development and redevelopment in the City of Laurel as discussed in the previous section.
>
> Therefore, for all of the above-stated reasons, this Special Chancellor finds that there is not a reasonable need for more developable land for the City of Laurel. This is particularly true, as Mr. Slaughter testified that he had not done any land use analysis of how much of each parcel for annexation was needed for future development.

(Trial Order pages 20-21).

e. The Need for Planning in the Annexation Area

Special Chancellor Thomas points out that there is no zoning in unincorporated Jones County, Mississippi, and that the total planning tools available in that same area consists of subdivision regulations. (Trial Order page 21). However, he also correctly states that cases decided by this Honorable Court have dealt with a variety of situations when dealing with this factor of "need for planning in the annexation area". In some of those cases this Court has approved annexations where the municipality was proposing no zoning at all. In other cases the situation finds no zoning within the county. Others are like the present case where there is no zoning within the county's unincorporated areas. (Trial Order page 21).

It is interesting to note in there is no argument of this ***City of Macon*** factor in the Appellant's Brief. What the Special Chancellor determines is that,

> The City of Laurel completely omits the Sharon parcel when detailing its argument for the need for planning within the PAA. This Special Chancellor finds that the Sharon parcel is very largely rural with little need for the myriad of city ordinances and restrictions that are truly incompatible with a rural lifestyle. The Sharon parcel is very rural and would not benefit from the municipal zoning requirements with all the strictures that are designed to protect tightly compacted yards and houses. Page(s) 3688, 3693, 3703 of Trial Transcript. Therefore, this Special Chancellor finds that there is no need for the zoning and planning that the city of Laurel could offer. For this reason, this factor mitigates against the annexation of the Sharon parcel. However, there was an issue raised in regard to potential health hazards in the Sharon parcel. These potential health hazards related to septic tank overflow problems. This Special Chancellor finds that these problems were limited to a small area and are not the sort of problems such that annexation would be the only remedy. Page(s) 3659 of Trial Transcript.

(Trial Order pages 22-23).

f. Increased Traffic Counts

The City of Laurel in their Appellant's Brief decry that if the Special Chancellor found that this factor weighed in favor of the annexation of the Pendorff area (Southern parcel) and the Western parcel, then how could he not find that this "Increased Traffic Count" factor not inure to the City of Laurel's benefit in the other areas – Sharon to be particular for the purposes of this

brief? The answer is simple – that is not where the traffic was increasing. The Special Chancellor did the job as per this Court's instructions on remand and made specific findings as to each parcel of the proposed annexation area. Special Chancellor Thomas looked at the testimony and exhibits and determined that with regard to the Sharon parcel, there was no evidence to justify a finding of favorability for annexation regarding this factor. (Trial Order at page 23-24).

The Special Chancellor concluded his thoughts on this factor with:

> This Special Chancellor finds that the City failed to demonstrate the meaning of the traffic counts of the various parcels relative to other cities in Mississippi and to each other. The failure of the City to brief this factor dictates that this factor should not weigh in favor of the need of annexation of the Shady Grove parcel. The Sharon parcel was approximately half of the traffic count in the northern portion of the Shady Grove parcel. The Sharon parcel was by far the parcel with the least amount of traffic based on Mr. Slaughter's data. This ***Macon*** factor heavily stands against the city of Laurel's need to expand into the Sharon parcel.

(Trial Order at pages 23-24).

g. Need to Maintain and Expand the City's Tax Base

In the Appellant's Brief, very little time is given to this factor and absolutely no mention of the evidence as to why this factor should weigh in favor of the need to expand by the City of Laurel into the Sharon parcel is ever mentioned. The City of Laurel reiterates that in the entire PAA there are 150 businesses who are not paying city taxes, however, the City of Laurel fails to break down which parcels these businesses are located in. As has been pointed out earlier in this brief and in the Special Chancellor's Order, approximately two of the 150 are located in the Sharon parcel. (See above the discussion of the ***Macon*** factor of "spillover growth" – the first in the list of ***Macon*** factors discussed herein).

The Special Chancellor concurs in this assessment. (Trial Order page 24). There the Special Chancellor holds, "In regard to this ***Macon*** factor, as it relates to the Sharon parcel, the Special Chancellor would recall here his discussion of spillover growth, that out of 150 businesses in the entire PAA, only two are located in the Sharon parcel. Such little economic

activity hardly weighs in favor of the City of Laurel annexing into the Sharon parcel to maintain and expand its tax base." (Trial Order page 24). It appears straightforward that this factor's purpose is to provide the decision maker information related to where the economic activity is heading. It is clear that although the City of Laurel claims repeatedly that they are the economic engine of Jones County; that economic activity – such that it exists – is taking place somewhere other than the rural confines of the Sharon parcel.

h. Limitations Due to Geography and Surrounding Cities

Again, the City of Laurel in their Appellant's Brief does not specifically discuss this ***Macon*** factor. The Special Chancellor states in his conclusion that this factor weighs in favor of the annexation into all directions because, "The City of Laurel is locked in by flood plains on its east boundary and on its west boundary. See Exhibit L-43. These surrounding areas could be developed, but at an increased cost; therefore, these areas are less desirable." (Trial Order page 24).

i. Remaining Vacant Land within the Municipality

The City of Laurel makes no argument on this factor in the Appellant's Brief. Chancellor Thomas ruled that this issue had been specifically discussed in two other factor categories: "The City's Need for Development Land" and "Internal Growth". (Trial Order page 25). He determined that it was clear from the testimony at trial that the City of Laurel had, "ample room to grow within its present boundaries given its declining rate of population over the last 40 years". (Trial Order page 25). He further concluded that, "The evidence indicated that the City had demolished some 400 dwelling units within the recent past. The demolition increased the potential lot size. The testimony also indicated that several apartment complexes have been built within the City. Apartment complexes house more people within a smaller footprint than individual housing units. Page(s) 3433 of Trial Transcript. There is ample vacant land

remaining within the city of Laurel for growth. This factor does not weigh in favor of the City of Laurel's need to expand into any parcel in this case." (Trial Order page 25).

j. Environmental Influences

This was apparently the shortest factor considered by anyone as the City of Laurel in their Appellant's Brief makes no mention of it and the Special Chancellor simply finds that the City of Laurel did not even make an argument under this factor to attempt to justify its need to expand. "Therefore, this Special Chancellor finds that this factor does not weigh in favor of the City of Laurel's need to expand into any particular parcel." (Trial Order page 25).

k. The City's Need to Exercise Control Over the PAA

This particular ***Macon*** factor seems a bit one-sided as there is never any mention of the unincorporated area of the county's need to exercise control over the municipality only of the city's need to exercise control over the PAA. That being the case, Chancellor Thomas still determined that the reasoning for his judgment call on this factor was fully addressed in "The Need for Planning in the Annexation Area" factor and he concludes his remarks on this factor by stating, "[T]his Special Chancellor finds that this factor favors the annexation of the Pendorff and Western parcels and disfavors the annexation of the Shady Grove and Sharon parcels." (Trial Order page 25).

l. Increased New Building Permit Activity

Yet again, the City of Laurel makes no argument under this factor in the Appellant's Brief and the Special Chancellor rules in the Sharon Objectors' favor on this ***Macon*** factor. He points to the testimony of the City of Laurel's expert in municipal planning, Michael Slaughter's, testimony under this factor, "Mr. Slaughter admitted that building permits issued by the City could have been for decks, patios, signs, additions, alterations or conversions, or adding a carport, storage facility or shed. Page(s) 1698-1699 of Trial Transcript. Therefore, this trend

weakly supports the city of Laurel's need for expansion into all areas of the PAA. It follows that this trend could not logically favor the annexation of any other parcel over another." (Trial Order page 26).

Conclusion of the *Macon* factors analysis

The Special Chancellor, after having carefully detailed facts associated with each of these factors to help him determine whether there was truly a need to expand by the City of Laurel into the separate and distinct proposed annexation areas determined with specificity relative to the Sharon parcel that, "Only one fact, 'Limitations Due to Geography and Surrounding Cities', supported the City of Laurel's need to annex the Sharon parcel. In balancing the ***Macon*** factors, the Special Chancellor finds that the City of Laurel's need to annex the Sharon parcel is not reasonable." (Trial Order page 27). The Sharon Objectors obviously and wholeheartedly agree with not only Special Chancellor Thomas' decision here, but also the previous Special Chancellor Reeves' decision as well. The new opinion we believe meets the mandates as set out by this Honorable Court for the Special Chancellor herein not only to make a decision as determined by the facts in this instant case, but to also detail the reasoning behind those decisions and tie those specific findings to specific facts as appeared in the testimony at trial and evidence submitted at trial. This is precisely what Special Chancellor Thomas has done with these ***Macon*** factors and what he has done with the remaining indicia of reasonableness as determined and outlined by this Honorable Court. A discussion of those remaining indicia are outlined below.

2. Path of Growth

This is an important factor to be considered, and yet the City of Laurel, in its Appellant's Brief merely quotes the Special Chancellor and then succinctly concludes that this indicium should favor the annexation of all parcels. (Appellant's Brief page 36). Yet, there is no evidence

cited on behalf of the City of Laurel for this conclusion and more specifically, no attempt made on their part to state why it is that the Sharon parcel should be annexed because of the "Path of Growth" of the City of Laurel leading into the Sharon parcel. The Special Chancellor was area-specific as he was instructed by this Honorable Court to be and ruled: "There is no factual basis that would justify a finding that the Sharon parcel is within the City's path of growth. The City of Laurel failed to meet its burden of proof that the area to the north of its present boundary, the Sharon parcel, is experiencing any significant growth. Further, the lack of any subdivisions currently existing in the Sharon parcel or being currently planned weighs heavily against the Sharon parcel being within the path of growth of the City of Laurel. This indicium weighs against the reasonableness of the annexation of the Sharon parcel." (Trial Order page 27-28).

3. Health Hazards

The Special Chancellor carefully looked into the alleged claims of health hazards in the individual parcels proposed for annexation and with respect to the Sharon parcel found a dearth of evidence to justify any need for an annexation by the City of Laurel. He cited testimony from Jim Westin, an environmental health program specialist in the waste water program with the Mississippi State Department of Health, who was called by the City of Laurel as one of their expert witnesses. (Trial Order page 28, Trial Transcripts page 193). The Special Chancellor highlighted Mr. Westin's testimony in his order where he concludes, "Mr. Jim Westin further testified that an area within the Sharon parcel gave him concern in regard to the use of septic tanks. This Special Chancellor finds that the septic tank problems in the Sharon parcel were limited to a small area and are not the sort of problems such that annexation would be the only remedy. Page(s) 193 of Trial Transcript. Therefore, this Special Chancellor finds that this indicium weighs against the city of Laurel's annexation of the Sharon parcel." (Trial Order page 30).

4. Financial Ability to Provide Municipal Services

The Special Chancellor focused in on specific aspects of the City of Laurel's overall services plan in making his assessment of this indicium. He registered in his opinion that the City of Laurel had set aside $10,000,000.00 for the first phase of their services plan (Trial Transcripts page 120) and conceded that the City of Laurel had thoroughly briefed its present financial condition, bonding capacity, expected amount of revenue to be received from taxes in the annexed area, and the financial plan and department reports proposed for the implementing and fiscally carrying out of the annexation. (Trial Order page 30). However, Chancellor Thomas recognized that after scouring through the testimony and evidence presented by the City of Laurel, there was no breakdown of the cost of implementing Phase I in each parcel in the event that the Special Chancellor should grant a portion or deny a portion of the proposed annexation. (Trial Order page 30). Specifically, Chancellor Thomas ruled:

> The Special Chancellor finds that it is the burden of the City of Laurel to provide such a breakdown of the costs of the annexation and, therefore, this indicium should weigh against the annexation of the entire PAA. If the annexation of any combination of the parcels is to be considered in light of the City's financial ability to provide services, this Special Chancellor finds that the annexation of the Pendorff and Western parcels is reasonable. The annexation of these two parcels would enable the City to focus its resources towards providing services only in these newly added parcels and would remove the doubt that any portion of the newly annexed parcels would not be provided services upon the completion of Phase II. . . . Phase I will only provide "backbone" sewer service that might or might not be provided to areas within the Sharon parcel within 5 years. This "backbone" service will be provided in the newly annexed areas upon the service being "necessary and economically feasible". Other services to be installed in the newly annexed parcels are water service, municipal fire protection, and trash pickup. The evidence showed that the City has no real idea of the cost of annexation or how the costs will be paid.

(Trial Order page 31). The Special Chancellor's conclusion is that this indicium does not weigh in favor of the City of Laurel being allowed to annex the Sharon parcel.

5. Need for Zoning and Planning in the PAA

This indicium is basically the same as the ***Macon*** factor, "The Need for Planning in the Annexation Area" that was examined by the Special Chancellor in the analysis of the "Need for Expansion" indicium. The City of Laurel, after referring to the Special Chancellor's ruling that this indicium did not weigh in favor of annexing the Sharon parcel into the City of Laurel, stated simply that they had proven the need for zoning and planning in the entire PAA. (Appellant's Brief pages 38-39). As is common throughout the entire brief by the City of Laurel, they make no attempt to break down which areas the facts do or do not support. Their strategy seems to be that their best chance of reversing this decision and annexing what they really want is to make blanket generalizations about all of the various parcels within the PAA instead of specifically addressing the facts as applies to the separate parcels.

The Special Chancellor, after reviewing the record determined that: "[T]his indicium weighs in favor of the annexation of the Pendorff and Western parcels but does not weigh in favor of the annexation of the Shady Grove and Sharon parcels. The Shady Grove and Sharon parcels are largely rural and do not have a need for the city of Laurel's planning and zoning." (Trial Order page 32). The conclusions reached by both Special Chancellors seem to make common sense as well. If you have no more than two businesses in the Sharon parcel out of the 150 businesses testified to exist in the entire PAA there is probably not a great need for municipal level zoning and planning that a more urbanizing area might benefit from.

6. Need for Municipal Services in the PAA

The Special Chancellor singled out each parcel in analyzing this indicium and with specific regard to the Sharon parcel, he held as follows in his Order:

> In regard to the annexation of the Sharon parcel, this Special Chancellor would refer to the discussion above of the *Macon* factor "The Need for Planning in the Annexation Area" and the "Health Hazards" indicium. These discussions, coupled with the testimony of the City of Laurel Fire Chief Steve Russell,

> demonstrate that this indicium does not favor of the City of Laurel's annexation of the Sharon parcel. Mr. Russell testified that all of the roads to be maintained within the Sharon parcel upon annexation are covered in the second phase of the incorporation of the new parcel. Further, he testified that a "great deal" of the territory would still be provided rural fire protection. Page(s) 656 of the Trial Transcript.
>
> Sharon's expert, Jim Elliott, summed up the argument against the need for municipal services in the largely rural Sharon parcel. Page(s) 3809 of the Trial Transcript. Although densely populated areas may need municipal services, a largely rural area like Sharon does not.
>
> The problem that this Special Chancellor has with the City of Laurel's service and facilities plan, Exhibit L-78, is that it only provides a "backbone system" and provides sewer services only to those right along the major transportation arteries. It will not provide additional sewer services to the majority of people out in the Sharon parcel for five or ten additional years. The city of Laurel's Mayor, Susan Vincent, and the city of Laurel's water and sewer service expert, Charles King, testified to as much. Page(s) 1652 of the Trial Transcript. Therefore, this Special Chancellor finds that the City of Laurel has not crafted a services and facilities plan that will be of any significant health benefit to the residents who live in the Sharon parcel for years to come.
>
> It is true that other parcels of the PAA have some municipal sewer services being provided by the city of Laurel. However, the testimony is clear from the Mayor of Laurel, as well as various experts, that there is no sewer service being offered to anyone in the Sharon parcel by the city of Laurel.

(Trial Order pages 34-35).

The City of Laurel in their Appellant's Brief opines that much of the PAA is densely populated, having already experienced dramatic growth. (Appellant's Brief page 41). However, with regard to the Sharon parcel, this is clearly not the case. As the Special Chancellor correctly points out, the Sharon parcel is a largely rural outlying area beyond the city limits. Further, the City states that in addition to the many other services already discussed, the City of Laurel would provide: comprehensive planning, zoning, sign regulations, building codes, a housing code, building inspections, electrical code, plumbing code, mechanical code, gas code, fire code, swimming pool code, unsafe building abatement code, sewer ordinance, contractors examination, licensing and bonding, and mosquito and pest control. (Appellant's Brief pages 41-42). The

City goes on to say that police and fire protection would be greatly improved in the areas annexed as well as improving traffic maintenance, water and sewer improvements and better insurance ratings. (Appellant's Brief pages 42-44). This may be the case for the more densely populated portions of the PAA like Pendorff and arguably the southernmost portion of the Shady Grove area, but nowhere in the City's brief or the trial transcript have they been able to accurately describe the Sharon parcel as "densely populated" or even "dramatically growing". In fact, just the opposite is true. The Sharon parcel by all testimony and all accounts – even the City's own experts, is that Sharon is a very lightly populated rural area with only two shops/stores in it. (Trial Transcript page 465). This being the case, all of the arguments made by the City might apply aptly to other areas, but not to Sharon where the municipal services are not wanted or needed. This indicium also does not favor the annexation of the Sharon parcel.

7. Natural Barriers

In addressing this indicium, the Special Chancellor simply pointed to his discussion of the ***Macon*** factor, "Limitations Due to Geography and Surrounding Cities" which he then incorporated by reference. (Trial Order page 35). The Special Chancellor finds that this indicium favors annexation of all areas proposed for annexation.

8. Past Performance

The Special Chancellor seems to gloss over the multitude of testimony – some even from a former city council member from the City of Laurel – that indicates poor past performance on the part of the City of Laurel. The Sharon Objectors believe that past behavior is a very good indication of future behavior. The Special Chancellor states: "The City acknowledged there were problems in the City, and always would be, but that there were being addressed." (Trial Order page 35). The Sharon Objectors believe that there are many problems within the current

City of Laurel and that they should be addressed first before rewarding the City of Laurel with an area which would more than double the current size of the municipality.

9. Economic or Other Impact on Residents and Property Owners

The Special Chancellor's conclusion on this indicium of reasonableness with regard to the Sharon parcel is that the indicium "weakly" favors annexation of the Sharon parcel. (Trial Order page 36). The Sharon Objectors would question what a "weak" favoring of annexation implies and what legal weight it would carry. In the nature of persuasiveness, it would seem that "weakly favoring" something is tantamount to not favoring it at all. These indicia are meant to give this Honorable Court guidance as to whether the conditions exist that would warrant annexation or not of a given area and if the evidence is not sufficient to support a recommendation of annexation, then it ought not be recommended. A "weak" favoring should not be viewed in the same light of favoring annexation of the Sharon parcel as "strongly favors annexation" would.

10. Impact on Minority Voting

This Court requires that someone with legal standing raise this issue before this Court will consider it. Here, that burden was met when Mr. Lewis Goins, an African-American resident of the area proposed to be annexed and Mr. James Jones, an African-American resident of the City of Laurel and former president of the Laurel and Jones County Chapter of the NAACP, testified against the City of Laurel's proposed annexation. (Trial Order page 36). The evidence clearly reveals a dilution of the minority voting strength within the City of Laurel should the annexation be granted as to all of the PAA. Exhibit L-27 showed the Census results of the 2000 Census revealed that the current racial composition of the City of Laurel at that time was 59.4% non-white and 40.6% white. (Trial Order page 36). The proposed annexation would bring into the City a population of 73.2% white and 26.8% non-white. (Trial Order pages 36-

37). The resulting change in the City of Laurel's is that the racial composition would then become 51.2% non-white and 48.8% white, thus greatly reducing black voting strength within the City of Laurel. (Trial Order page 37). The question then becomes, "How would each particular parcel affect the black voting strength in the City of Laurel were it to be annexed?" The Special Chancellor was quick to point out that the City of Laurel's brief and the trial transcript do not reveal the effect of annexing the Sharon parcel. (Trial Order page 37). The Special Chancellor quotes from the Sharon area expert, Jim Elliot, "[H]is survey conducted in the Sharon parcel revealed that there were 124 houses in the parcel and that almost 100% of those were white." (Trial Transcript page 3752, Trial Order page 37).

The Special Chancellor dug further into the transcript to discover the further effects the annexation would have on this important indicium of reasonableness:

> Expert Joe Lusteck testified that in his involvement in many annexation cases, this case involved the largest dilution of black voting that he had ever seen. (Trial Transcript page 3094).
>
> It appears fairly clear that the City of Laurel by their proposed annexation would take the City of Laurel backwards in terms of minority voting strength. The annexation of the entire PAA would require this Special Chancellor to make an extensive determination of whether there is any discriminatory purpose to the annexation. Such a determination is not necessary under the circumstances in this case given that the entire PAA is not reasonable for annexation. The annexation of the Pendorff and Western parcels, as is dictated by this Special Chancellor's order, do [not] raise any issue of the dilution of minority voting strength in the city of Laurel or discriminatory intent on the part of the city of Laurel. The combined population of these two parcels is 1011 people. Even if all of the people brought into the city of Laurel through the annexation of Pendorff and Western parcels were white, which they are not, then the minority voting strength of the City would not be dramatically [a]ffected. The existing percentages would be 43.7% white and 56.3% non-white.

(Trial Order pages 37-38). Clearly, this indicium should counsel this Court strongly against the annexation of the nearly all white Sharon parcel.

11. Enjoyment of Economic and Social Benefits of the Municipality without Paying a Fair Share of Taxes

The Special Chancellor buys into the City of Laurel's argument here that Laurel is the "economic hub of Jones County". (Trial Order page 38). He goes on to state that, "The record reflects that those outside the City take advantage of the City's recreation program. *See* Exhibit L-56. The City provides the seat for county government, hospitals, churches and shopping." (Trial Order page 38). While all of these things may be true, the underlying fact also is that when these folks from outside the City of Laurel come into Laurel to "take advantage" of what the City of Laurel offers, they also pay taxes when they stop and buy gas, eat at a restaurant, shop at the Wal-Mart and purchase clothing items, law care items, or stop at the car dealerships and buy a car or truck. The idea that people from outside a municipality who drive into town and pay the sales taxes that they are required to when they purchase items somehow are not paying their "fair share of taxes" seems a bit odd to the Sharon objectors. If this is the case, then surely at the city limits of every municipality in Mississippi we should erect toll gates where the outsiders may stop and pay their "fair share" before entering the municipality. This seems ridiculous; so too then does the idea that there is a proper amount of tax every person should pay when they come into a municipality from outside of that municipality. It seems a much more reasonable conclusion to reach simply to allow people to pay the sales tax on items they purchase inside a municipality and call that their "fair share".

12. Other Factors That May Suggest Reasonableness

Mercifully, the Special Chancellor found no other factors to raise in this case. It does seem a bit unfair that the Court would consider only other factors that "may suggest reasonableness" while not conversely considering any other factors that may suggest unreasonableness as well.

CONCLUSIONS

The Special Chancellor found correctly that HB 1730 was constitutional. He found the annexation of the Sharon parcel to be unreasonable after considering all of the factors and indicia outlined by this Court's many rulings on past annexation cases. Special Chancellor Thomas did make clear his learned analyses regarding the proposed annexation of the Sharon parcel as follows:

> The conclusion in regard to the Sharon parcel is easily drawn given that only four indicia, Natural Barriers, Past Performance, Economic or other Impact on Residents and Property Owners, and Fair Share of Taxes, weighed in favor of the reasonableness of its annexation. These indicia do not outweigh the findings of unreasonableness for the Need for Expansion, Path of Growth, Financial Ability, and Need for Municipal Service indicia.

(Trial Order page 39).

We believe that the Special Chancellor correctly assessed and analyzed the factors with regard to the reasonableness (or unreasonableness) of annexation specifically as relates to the Sharon parcel and found correctly that the great weight of the evidence counsels against the City of Laurel being allowed to annex the Sharon parcel.

The Special Chancellor detailed with specificity the reasons why he believes the facts and testimony presented at the trial of this matter do not warrant the reasonable annexation of the Sharon parcel. As such, he has complied with this Court's dictate on remand and has made no legally incorrect ruling and is certainly not manifestly wrong with regard to his conclusions.

Respectfully submitted, this the 21st day of May, 2008.

Sharon Waterworks Association
Appellee

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CERTIFICATE OF SERVICE

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

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This, the 21st day of May, 2008.

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