

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 2009-TS-00584**

**IN THE MATTER OF THE ENLARGING,
EXTENDING AND DEFINING THE
CORPORATE LIMITS AND BOUNDARIES OF
THE CITY OF HORN LAKE, DESOTO
COUNTY, MISSISSIPPI**

CITY OF HORN LAKE, MISSISSIPPI

APPELLANT

V.

**TOWN OF WALLS, MISSISSIPPI,
DESOTO COUNTY, MISSISSIPPI, and
THE WALLS FIRE PROTECTION DISTRICT**

APPELLEES

**Appeal from the Chancery Court of
Desoto County, Mississippi
Cause No. 08-05-0981
Consolidated With
Cause No. 07-12-2387ML**

REPLY BRIEF OF APPELLANT CITY OF HORN LAKE, MISSISSIPPI

Oral Argument Requested

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STATEMENT REGARDING ORAL ARGUMENT

This Court is being asked to reverse and render the determination of the DeSoto County Chancery Court that the annexation proposed by the City of Horn Lake is not reasonable. Oral argument will give the Appellant an opportunity to explain the significance of the exhibits and testimony offered in this case. This is particularly important in this matter, as the Opinion of the DeSoto County Chancery Court, which this Court is being asked to reverse, fails to cite to a single exhibit or to the testimony of a single witness offered by the City of Horn Lake in support of its annexation.

The trial court record in this matter contains nearly 1,400 pages of trial testimony and over 160 exhibits, and the City of Horn Lake respectfully submits that this Court's grasp of the record and the issues presented in this matter will be greatly enhanced by oral argument. For these reasons, the City of Horn Lake respectfully requests that this Court grant oral argument in this matter.

I. Summary of the Argument

The Chancellor's Opinion and Final Judgment with regard to the annexation proposed by the City of Horn Lake should be reversed and rendered. The Chancellor disregarded the substantial and credible evidence presented in this case in concluding that Horn Lake's proposed annexation was unreasonable in its entirety. The substantial and credible evidence introduced at the trial of this matter, including nearly 100 exhibits and the testimony of numerous witnesses on behalf of the City of Horn Lake, established that Horn Lake's proposed annexation is reasonable under the totality of the circumstances and considering the twelve *indicia* of reasonableness. The Chancellor's Opinion finding otherwise is manifest error and is not supported by substantial and credible evidence.

II. Argument - The Annexation Proposed by the City of Horn Lake is Reasonable Under the Totality of the Circumstances

The Town of Walls, DeSoto County, and the Walls Fire Protection District contend that the Chancellor's Opinion must be affirmed by this Court based upon *City of Ridgeland. In the Matter of the Extension of the Boundaries of the City of Ridgeland*, 651 So. 2d 548 (Miss. 1995). However, the Appellees' reliance on *City of Ridgeland* as requiring this Court to affirm the Chancellor's Opinion is misplaced, as *City of Ridgeland* does not alter this Court's long-standing standard of review in annexation matters which merits reversal where a chancellor commits manifest error or where his findings are not supported by substantial and credible evidence. *Id.* at 553. *City of Ridgeland* does not require this Court to function as a rubber stamp, approving the opinion of a chancellor in an annexation matter so long as there is a mere *scintilla* of evidence in the record below to support the chancellor's opinion, as the Appellees suggest. Rather, this Court very clearly requires that a chancellor's opinion be supported by **substantial and credible evidence**. *Id.* Where the substantial and credible evidence submitted at trial establishes that a

proposed municipal annexation is reasonable under the totality of the circumstances, as is the case at hand, a chancellor's opinion finding otherwise must be reversed.

As discussed at length in Horn Lake's Principal Brief, the substantial and credible evidence submitted at trial established that the annexation proposed by the City of Horn Lake is reasonable under the totality of the circumstances, considering the twelve *indicia* of reasonableness established by this Court. Nearly 100 exhibits were admitted in support of Horn Lake's proposed annexation. The Chancellor's Opinion cites to none of them. Numerous witnesses testified in support of the Horn Lake's proposed annexation, including the City of Horn Lake's Fire Chief, Police Chief, Public Works Director, City Engineer, Planning and Zoning Director, and expert witness in the fields of civil engineering, urban and regional planning, and municipal finance. The Chancellor's Opinion disregards this critical witness testimony.

As discussed below, contrary to the assertion of the Appellees, the Chancellor's Opinion is simply not supported by substantial and credible evidence, disregards the overwhelming weight of the evidence submitted at trial, is manifestly erroneous, and must be reversed. As no party disputes that the PAA is within the path of growth of the City of Horn Lake, that there are no natural barriers between the City of Horn Lake and the PAA, and further that Horn Lake's proposed annexation will not adversely impact the voting strength of any protected minority groups, these *indicia* are not discussed herein. Rather, the substantial and credible evidence on each of those three *indicia* is set forth in Horn Lake's Principal Brief, which is fully incorporated herein.

A. The City of Horn Lake Clearly Demonstrated a Need to Expand Its Municipal Boundaries.

Neither DeSoto County nor the Walls Fire Protection District offer any substantive rebuttal to the significant issues raised in Horn Lake's Principal Brief regarding the Chancellor's

finding on this *indicium*. The Town of Walls' contention that the Chancellor's Opinion on this *indicium* was not in error is flawed, as the substantial and credible evidence at trial established that Horn Lake has a need to expand.

i. Spillover Development.

Walls first offers the testimony of its expert witness Chris Watson as support for the Chancellor's Opinion on the issue of spillover development. Specifically, Walls offers the testimony of Mr. Watson that one meaning of "spillover development" is "literally a cup runneth over type spillover." Walls, p. 7.¹ However, the testimony of Mr. Watson offered by the Town of Walls on this issue is misleading, as Mr. Watson rejected the applicability of the "cup runneth over" definition of spillover development in this case. T. 379; Horn Lake, p. 9. Rather, Mr. Watson testified that, in his expert opinion, the proper definition to utilize in analyzing what is and what is not spillover development in this case is to "give consideration to the location" of the development. *Id.* Accordingly, Walls' reliance on Mr. Watson's testimony as supportive of the Chancellor's Opinion is misplaced, and completely ignores the totality of Mr. Watson's testimony on this *indicium*.

Giving consideration to the location of development, as Mr. Watson suggests is the appropriate method of determining what is and what is not spillover development in this matter, Exhibit H.L. 50 clearly demonstrates that much of the development in the PAA is spillover from the City of Horn Lake. For example, the Lake Forest Subdivision, which is immediately adjacent to the existing city limits of Horn Lake, and served with sanitary sewer by Horn Lake, fits squarely within the applicable definition of "spillover development." Similarly, the CVS

¹ For ease of reference, all citations to the Appellee Briefs filed in this matter will be cited in this Reply Brief as follows: The Appellee Brief of the Town of Walls, Mississippi will be cited as "Walls, p. 1, 2, etc."; the Appellee Brief of the Walls Fire Protection District will be cited as "W.F.P.D., p. 1, 2, etc."; and the Appellee Brief of DeSoto County, Mississippi will be cited as "DeSoto County, p.1, 2, etc." Further, as in Horn Lake's Principal Brief, citations to the portion of the record containing the transcript of the DeSoto County Chancery court hearing will be cited as "T. 1, T. 2," etc. Citations to exhibits presented by the City of Horn Lake will be cited as "H.L. 1, H.L. 2," etc. and citations to exhibits presented by the Town of Walls will be cited as "W. 1, W. 2," etc.

drugstore which recently relocated to the northwest corner of Highways 301 and 302, just across the street from the existing Horn Lake city limits, is another obvious example of spillover development from the City of Horn Lake into the PAA. H.L. 50.

Further, the trial court completely disregarded the testimony of Mike Slaughter, an expert in the fields of civil engineering, urban and regional planning, and municipal finance, that spillover development from the City of Horn Lake into the PAA is occurring. T. 849-51; H.L. 50, 79; Horn Lake, p. 8-9. While Horn Lake acknowledges that there was limited development in the PAA prior to Horn Lake's 2002 annexation, the trial court did not consider the testimony of Mr. Slaughter that Horn Lake's extension of sewer to over 46% of the PAA has fostered continued growth throughout the PAA, both within existing subdivisions and in new developments. T. 850-51, 983; Horn Lake, p. 9-10. The evidence introduced at trial confirms this fact, establishing that, between the years 2000 and 2008, the population of the PAA has increased by 37.7%, with its population density increasing from 341 persons per square mile to 469 persons per square mile. H.L. 26; Horn Lake, p. 8-10. As demonstrated by the substantial and credible evidence at trial, spillover development from the City of Horn Lake into the PAA is occurring. The Chancellor's finding on this *indicium* was manifest error.

ii. The City of Horn Lake's Internal Growth, Population Growth, and Building Permit Activity.

With regards to Horn Lake's internal growth, the Town of Walls would have this Court hold that, because certain developments within the City have slowed as a result of present national and local economic conditions, the City of Horn Lake has not experienced any internal growth sufficient to support its need to expand. Walls, p. 9-10. However, such a position is nonsensical and ignores the substantial and credible evidence.

The Chancellor's review of Horn Lake's internal growth is very clearly limited to four planned unit developments within the existing City. Opinion, 6-7. Certainly, in order to properly

evaluate a municipality's internal growth, a chancellor must review the municipality as a whole, not merely review the internal growth of specific developments within a city. Here, while the Chancellor focused on the development progress of four developments inside the City of Horn Lake, the evidence submitted at trial established that, since the year 2000, in excess of 40 new commercial and residential developments have been commenced within Horn Lake. H.L. 62. The Chancellor failed to consider the other 36+ residential and commercial developments commenced since 2000 in his apparent opinion that Horn Lake's internal growth does not support a need to expand.

Further, with respect to those four developments which, according to the Chancellor "remain largely vacant and undeveloped," this Court, in *City of Southaven*, rejected the argument that vacant residential lots weigh against a municipality's need to expand. *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Southaven*, 864 So. 2d 912, 921 (Miss. 2003). Specifically, in *City of Southaven*, this Court held that the City of Southaven had a need to expand, despite the fact that in twelve subdivisions which had been commenced in the five years preceding Southaven's annexation attempt, there were "4,774 vacant lots." *Id.* Accordingly, any reliance on the remaining development capacity of four subdivisions in the City of Horn Lake as weighing against Horn Lake's internal growth and its need to expand is misplaced and is in manifest error.

Further, Horn Lake's population growth over recent years unquestionably demonstrates that Horn Lake has experienced significant internal growth and supports Horn Lake's need to expand. The undisputed evidence with regards to Horn Lake's population growth established that between 2003 and 2008, the population of the City of Horn Lake grew by an estimated 16.8%, from 20,946 citizens to 24,470 citizens. H.L. 26, 66; T. 852-53.

Moreover, the evidence at trial established that, as a result of Horn Lake's significant internal growth, the City's population density has reached an estimated 1,501 persons per square mile, the highest of any municipality in DeSoto County. H.L. 26, 65; T. 854. Prior precedent of this Court has clearly considered the impact population density of a municipality has on that municipality's need to expand. For example, in *City of Jackson v. Byram Incorporators*, this Court found that Jackson had a need to expand, despite having a declining population, based in part upon Jackson's population density, stating: **"Even with its population in decline, Jackson still maintains a high population density of 1,724.27 residents per square mile that could be alleviated with annexation."** *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 684-85 (Miss. 2009). Similarly, in *City of Clinton*, this Court found that Clinton's population density of 1,000 persons per square mile was **"very dense"** for a southern municipality and supported Clinton's need to expand. *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Clinton*, 955 So. 2d 307, 315 (Miss. 2007). Moreover, in *Poole v. City of Pearl*, this Court, in finding that the City of Pearl had a need to expand, held:

In arguing that Pearl has no need for expansion which would support its annexation effort, the Objectors focus on Pearl's slowly growing residential population, which increased approximately 12% from 1990 to 2000. **However, the record reflects that the density of population in the City of Pearl is more than double every other municipality in Rankin County, except Brandon. Its density is four times that of neighboring Flowood.**

Poole v. City of Pearl, 908 So. 2d 728, 735 (Miss. 2005).

Clearly, this Court places far more emphasis on the issue of the population density of a municipality in assessing a municipality's need to expand than Walls suggests in its Brief. **The Chancellor, however, completely disregarded the evidence related to Horn Lake's population density.** With Horn Lake's population density being the highest of any municipality in DeSoto County, and exceeding that found by this Court to be "very dense" in *City of Clinton*

by an estimated 501 persons per square mile, this is a factor which unquestionably supports Horn Lake's need to expand, and which certainly should have been considered by the Chancellor.

Furthermore, the evidence unquestionably demonstrated that, between the years 2000 and 2008, Horn Lake experienced significant building permit activity. H.L. 16, 17, 18, 19, 20; T. 875-79. Specifically, it was established that between 2000 and 2008, the City of Horn Lake issued a total of 1,929 new residential building permits and a total of 83 new commercial building permits, with a cumulative value nearing \$167,000,000. *Id.* While the City of Horn Lake does not dispute that it, like nearly every other municipality in this State, has seen its issuance of residential building permits impacted by the national economic downturn, this does not diminish the impact that the significant residential and commercial building activity within the City has had upon Horn Lake's available land resources.

Moreover, this Court, in *City of Southaven*, rejected the very argument that is urged by Walls, finding that the City of Southaven had a need to expand despite realizing a recent decline in permit issuance and having some 4,774 vacant lots available for development in the City. *City of Southaven*, 864 So. 2d at 921. Accordingly, Walls' efforts to support the Chancellor's Opinion are misplaced. The substantial and credible evidence at trial established that the City's building permit activity, population growth, population density, and internal growth support Horn Lake's need to expand. For the Chancellor to find otherwise was manifest error.

iii. The City of Horn Lake's Need for Vacant, Developable Land.

As further evidence of its need to expand, the City of Horn Lake established that it had a need for vacant, developable land. Specifically, the evidence submitted at trial established that only 30.1% of the total land area within the City of Horn Lake is vacant, unconstrained land which is suitable for development. H.L. 95; T. 857-59. This Court has previously found that municipalities with far more vacant, developable land than the City of Horn Lake has in this

case, had a need to expand. For example, as stated in Horn Lake's Principal Brief, this Court has previously upheld annexations by the cities of Southaven, Madison, and Ridgeland, which had usable vacant land of 43%, 59%, and 48%, respectively. *City of Ridgeland*, 651 So. 2d at 554-56; *Matter of the Enlargement and Extension of the Mun. Boundaries of the City of Madison*, 650 So. 2d 490 (Miss. 1995); *Matter of City of Horn Lake*, 630 So. 2d 10, 18 (Miss. 1993). Simply put, the City of Horn Lake, with a mere 30.1% vacant, developable land, is well below the levels of vacant, developable land that this Court has previously found to support a municipality's need to expand.

Moreover, with respect to the factor of the availability of vacant land within a city seeking to annex, this Court has previously held as follows:

Our previous annexation decisions clearly distinguish the impact upon reasonableness of available developable land in a city's path of growth as opposed to developable land in other areas. **We have stated that "the fact that there may be some other vacant lands already available in the City does not prohibit annexation nor does it require that an *indicia* be found to be against the community proposing annexation."** [emphasis added]

Poole v. City of Pearl, 908 So. 2d at 735 (citing *In the Matter of the Extension of the Boundaries of the City of Winona*, 879 So. 2d 966, 973 (Miss. 2004)). Accordingly, the Chancellor was in error to find that Horn Lake, by virtue of having other developable land within its existing city limits, does not have a need for vacant, developable land.

Similarly, the Chancellor erred in finding that the approximately 1,411 acres of vacant land within the City of Horn Lake, which are located in the floodway, weighed against Horn Lake's need for vacant, developable land. This Court, in a prior City of Horn Lake annexation case, recognized that the floodplain functions as a **"severe restricting factor to any type of development"** and that to develop land within the floodplain is **"very expensive."** *City of Horn Lake*, 630 So. 2d at 17. Accordingly, the Chancellor was in error to find that the availability of vacant land in the floodway weighed against Horn Lake's need to expand.

iv. The Need for Planning and Zoning in the Proposed Annexation Area.

While it is not disputed that DeSoto County provides good county-level planning and zoning services, the substantial and credible evidence at trial established that the City of Horn Lake provides excellent municipal-level planning and zoning services. T. 860-61. Further, Mike Slaughter testified that the PAA, which is developing at an urban density, would benefit from the City of Horn Lake's ability to focus its comprehensive planning and zoning efforts on a much smaller geographical area than the County planning department is able to do. *Id.* Accordingly, while both DeSoto County and Horn Lake are quite capable of providing needed planning and zoning in the PAA, the substantial and credible evidence established that the PAA would benefit from Horn Lake's municipal-level planning and zoning and this factor should have been found to weigh in favor of Horn Lake's proposed annexation. T. 860-61.

v. Increased Traffic Counts.

Walls' Brief does not challenge that the Chancellor's Opinion on this *indicium* failed to address the factor "increased traffic counts." As set forth in Horn Lake's Principal Brief, the evidence submitted at trial established that traffic counts around the City of Horn Lake and the PAA were increasing. H.L. 116. Further, Mike Slaughter testified that this was a factor which weighed in favor of Horn Lake's need to expand. T. 866. The Chancellor erred in failing to consider the substantial and credible evidence on this factor.

vi. Other Factors Establishing Horn Lake's Need to Expand.

The evidence submitted at trial demonstrated that the City of Horn Lake's ability to physically expand is limited by the City of Southaven to the east, north, and south, the Town of Walls to the west, and the City of Hernando to the south. H.L. 1, 44; Horn Lake, p. 12-13. The Chancellor was in error to find otherwise. Similarly, the evidence submitted at trial established that environmental influences such as the floodway and floodplain significantly impacted the

remaining vacant land supply within the existing City of Horn Lake. T. 873-74. The Chancellor fails to consider the significant impact of these environmental influences on the existing City.

Further, the evidence established that the City of Horn Lake has a need to maintain and expand its tax base. T. 868. Specifically, it was established that the PAA serves as a major growth corridor for Horn Lake, with Highway 302 extending from the City of Horn Lake into the PAA. *Id.* Given the significant commercial and residential growth that is occurring and will continue to occur along Highway 302, it is important that Horn Lake expand its boundaries to include the PAA in order to protect and expand the City's tax base. *Id.*

Ultimately, the substantial and credible evidence before the court below on each of the factors set forth by this Court in *Winona* clearly demonstrated that Horn Lake has a need to expand. *Winona*, 879 So. 2d at 974. As established by this Court in many prior municipal annexation cases, these factors are helpful in the determination of a municipality's need to expand. See, e.g., *In the Matter of the Enlargement and Extension of the Corporate Limits and Boundaries of the City of Southaven*, 5 So. 3d 375 (Miss. 2009); *Winona*, 879 So. 2d at 974; *In the Matter of the Enlargement and Extension of the Boundaries of the City of Macon*, 854 So. 2d 1029, 1034 (Miss. 2003). Here, the substantial and credible evidence on each of these factors established that Horn Lake had a need to expand. The Chancellor was in manifest error to find otherwise.

B. There Are Potential Health Hazards in the Proposed Annexation Area.

On this *indicium*, Walls argues that the Chancellor's Opinion reflects a "comparative analysis of the potential health hazards," concluding that "a better job is being done in the unincorporated proposed annexation area than in either Walls or Horn Lake." Walls, p. 21. Walls' position is, however, flawed, as the evidence on this point is clear: the entity primarily responsible for the reduction of health hazards in the PAA is the City of Horn Lake.

Specifically, the evidence established that, as of the trial of this matter, some 779 dwelling units in the PAA (46% of the total dwelling units in the PAA) were connected to the City of Horn Lake's sewer system. H.L. 75. Put another way, as a result of Horn Lake's financial investment in the PAA, there are 779 less dwelling units relying on on-site sewage treatment and/or septic tanks as their primary method of sewage disposal, a fact which certainly should be given tremendous weight in favor of Horn Lake's proposed annexation. However, the Chancellor's opinion did not consider the weight of this evidence.

Walls argues that, while the soils in the PAA are not conducive to on-site sewage treatment systems (a fact which this Court repeatedly holds to be supportive of an annexation under this *indicium*), "only 72 homes would be served in the annexation area under Horn Lake's plan to deliver sanitary sewer services." Walls, p. 22. However, to imply that Horn Lake's plan would be to serve "only 72 homes" is grossly misleading, and totally disregards the undisputed fact that nearly half of dwelling units in the PAA are already served with sanitary sewer by the City of Horn Lake. H.L. 75. In reality, the City of Horn Lake's commitment to spend in excess of \$1,200,000 on the delivery of additional sanitary sewer improvements to residents and property owners of the PAA will result in Horn Lake serving approximately **851 existing dwelling units** in the PAA. H.L. 73, 74, 75. Furthermore, this expensive commitment by Horn Lake to the extension of sanitary sewer throughout the PAA will not only result in sewer services to 851 existing residential units, but it will also make centralized sanitary sewer available to future development in the PAA (both residential and commercial) as well. T. 983.

It should be remembered, however, that the point of this *indicium* is to determine whether there are potential health hazards **in the proposed annexation area**, not in the annexing municipality. To this end, this Court, in *Winona*, set forth a number of factors which a court should consider in determining whether there are potential health hazards in a proposed

annexation area which would bear on the reasonableness of an annexation. *Winona*, 879 So. 2d at 979.

As discussed in depth in Horn Lake's Principal Brief, substantial and credible evidence submitted at trial on each of the *Winona* factors established that there are potential health hazards in that portion of the PAA not presently served with sanitary sewer by the City of Horn Lake. Specifically, Horn Lake introduced both photographic evidence and testimony establishing the presence of failing septic tanks in the PAA, direct discharge of sewage into streams, open dumping of garbage, and standing water and sewage. T. 904-905; H.L. 45, 46, 108. Moreover, Horn Lake presented the court with a reasonable plan to address the potential health hazards in the PAA. H.L. 119. The trial court apparently did not consider this evidence in making its finding under this *indicium*. Opinion, 10-11. There are unquestionably potential health hazards in the PAA in those areas not served with sanitary sewer by the City of Horn Lake, and the Chancellor was in error to find that this *indicium* does not support Horn Lake's proposed annexation. Further, the Court's complete disregard for the fact that Horn Lake presently provides approximately 46% (779 dwelling units) of the PAA with sanitary sewer is indicative that the trial court's finding on this *indicium* was contrary to the substantial and credible evidence at trial.

C. The City of Horn Lake Has the Financial Ability to Make Improvements and Provide Municipal Services in the Proposed Annexation Area.

Perhaps the biggest fallacy in both Walls' Brief and, more importantly, the Chancellor's Opinion on this *indicium* is the conclusion that Horn Lake, with a FY 2007 audited general fund balance of \$5,720,724 and a bonding capacity of \$15,626,917 under the 15% Rule² and \$23,477,566 under the 20% Rule,³ does not have the financial ability to undertake an annexation

² *Miss. Code Ann.* § 21-33-303.

³ *Id.*

which pays for itself. The evidence at trial clearly established that the City's estimated revenues from the PAA of \$6,417,686 over the first five years following annexation will exceed the City's projected operating costs for the PAA of \$4,410,784 over that same period. It is difficult to imagine how the City of Horn Lake, which Standard & Poors describes as being in a "very strong financial position," and as having "continued steady economic expansion and very strong reserves," could not afford to undertake an annexation in which revenues exceed expenses by \$2,006,902. H.L. 12, 119. The simple fact that this annexation more than pays for itself is per se evidence that Horn Lake has the financial ability to deliver promised services and improvements to the PAA. Nevertheless, the Chancellor completely disregarded this critical fact, and the Town of Walls does not even try to explain why.

It is important on this *indicium* that it be remembered that this Court requires that a chancellor's opinion be supported by substantial and credible evidence. *City of Ridgeland*, 651 So. 2d at 553. Here, as the City of Horn Lake's Principal Brief demonstrates, the Chancellor's Opinion that the City of Horn Lake failed to carry its burden of proving reasonableness under this *indicium* is against the substantial and credible evidence. Horn Lake, p. 21-27. Walls completely fails to provide any credible evidence or witness testimony which would suggest otherwise.

Horn Lake's proposed annexation will not require a tax increase. H.L. 118, 119. Nonetheless, Walls' argument on this *indicium* relies heavily on the testimony of its expert witness Chris Watson that, in order for Horn Lake to undertake this annexation, a tax increase may be required. Walls, p. 27. However, for purposes of argument, even assuming that a tax increase was required, "this Court has addressed the impact of higher taxes in many prior annexation cases and has consistently held that the prospect of a tax increase is insufficient to defeat annexation." *Poole*, 908 So. 2d at 743. Accordingly, while Horn Lake's expert witness

testimony and financial projections clearly demonstrate that no tax increase will be required, even assuming *arguendo* that a tax increase was required, this would be insufficient to defeat annexation. H.L. 118, 119; T. 968-971.

Walls' Brief further directs this Court to two memorandums regarding City administrative budgetary decisions and two Horn Lake grant applications as supportive of the Chancellor's Opinion on this *indicium*. However, as discussed in detail in Horn Lake's Principal Brief, the statements contained in these documents cannot be reconciled with the actual financial condition of the City of Horn Lake, and any contention that these documents support a finding that the City of Horn Lake does not have the financial ability to undertake this annexation are unfounded. For example, the audited financial statements of the City of Horn Lake for the years leading up to the City's proposed annexation do not show a city in distress. H.L. 6, 7, 8, 9, 10. Instead, the City's audited financial statements evidence that Horn Lake is in excellent financial condition. Likewise, the City's balanced FY 2009 budget does not show a city in distress. H.L. 14. Rather, the City's historically strong fund balances and balanced budget depict a city which is in extremely sound fiscal condition and is managed in a fiscally conservative manner. The lower court's opinion is completely void of any reference to these Horn Lake financial exhibits which undeniably establish the excellent financial condition of Horn Lake. Simply put, the Chancellor's Opinion ignores the substantial and credible evidence on this *indicium*.

It must be emphasized that there were only two witnesses which testified at the trial of this matter regarding Horn Lake's financial ability: Mike Slaughter, accepted by the trial court as an expert in the fields of civil engineering, urban and regional planning, and municipal finance, and Chris Watson, accepted by the trial court as an expert in urban and regional planning. **Both ultimately testified that the City of Horn Lake has the financial ability to deliver promised services and improvements to residents and property owners of the PAA.** T. 975-76, 1370.

[Direct Examination of Mike Slaughter, by Mr. Mask]:

Q. All right. Mr. Slaughter, based upon all of the documents which you have testified about yesterday and today, as well as the cost of providing the commitments for personnel and equipment to serve the proposed annexation area, have you formed an opinion as an expert in the field of urban and regional planning and municipal finance as to whether the City of Horn Lake has the financial ability to provide these services and make these improvements in the annexation area?

A. Mr. Mask, based on all the documents that I reviewed as we just reiterated, as well as the services and facilities plan, including all the tables, tables one through nine and the projections, I feel like the City of Horn Lake itself is in very strong financial condition, and I feel like that the proposed annexation area will generate adequate revenues over expenditures, that I've been very conservative in projecting revenues for the proposed annexation area. So I feel like that the City of Horn Lake is in sound fiscal condition and has the financial ability to make the services – provide the services, personnel, and equipment to the proposed annexation area as described in HL-119. [Testimony of Michael Slaughter, City of Horn Lake Expert Witness. T. 975-76.]

[Cross-Examination of Chris Watson, by Mr. Mask]:

Q: Assuming every one of these assumptions that you've identified, assuming every one of these weaknesses that you identified and assuming every one of these things that you would do differently, that still has absolutely no impact on the financial feasibility of the City of Horn Lake's proposed annexation, does it?

A: Mr. Mask, I believe that the City of Horn Lake in all likelihood does have the financial ability to do this.... [Testimony of Chris Watson, Town of Walls Expert Witness. T. 1370.]

Certainly, it is manifest error for the trial court to utterly disregard the opinions of the only two expert witnesses testifying with regards to Horn Lake's financial ability where there is absolutely no substantial and credible evidence elsewhere in the record to support the Chancellor's finding otherwise. As discussed in Horn Lake's Principal Brief, the substantial and credible evidence at trial established that Horn Lake has the financial ability to undertake its proposed annexation, and for the Chancellor to disregard the testimony of Mr. Slaughter and Mr. Watson and find otherwise was manifest error.

This Court, in *Winona*, set forth certain factors which a court should consider in determining whether a municipality has the reasonable financial ability to provide services and

improvements promised to citizens of areas sought to be annexed. *Winona*, 89 So. 2d at 981-82. As discussed in depth in Horn Lake's Principal Brief, the substantial and credible evidence introduced on each of these factors established that Horn Lake has the financial ability to undertake its proposed annexation. It was manifest error for the Chancellor to find otherwise.

D. There is a Need for Zoning and Overall Planning in the Proposed Annexation Area.

As set forth in Horn Lake's Principal Brief, the Chancellor erred in finding that this *indicium* weighs against annexation. The record established that, while DeSoto County provides the residents of the County with good planning and zoning at the county-level, Horn Lake provides its residents and citizens with excellent municipal-level planning, zoning, and code enforcement. Horn Lake, p. 27-28; H.L. 24, 81, 102, 105; T. 790-91, 977-79. Further, Mike Slaughter testified that the City of Horn Lake is capable of providing the residents and property owners of the PAA with necessary planning and zoning, and further that the residents of the PAA would benefit from the municipal-level planning, zoning, and code enforcement that Horn Lake provides. T. 795, 977-78. This *indicium* should, therefore, have been found to weigh in favor of Horn Lake's proposed annexation.

Moreover, even assuming, *arguendo* that the *City of Southaven* case should be considered here, as Walls contends, this *indicium*, while it may not "favor" annexation, does not weigh against annexation either. *City of Southaven*, 5 So. 3d at 380. Rather, as applied to the facts of this case, this *indicium* is as Walls' expert Chris Watson testified, a "neutral factor" and "neither weighs in favor, nor against" Horn Lake's proposed annexation. T. 391-92. Moreover, **"this factor alone, however, does not determine whether or not the annexation is reasonable."** *City of Southaven*, 5 So. 3d at 380.

E. There is a Need for Municipal Services in the Proposed Annexation Area.

The Town of Walls offers no rebuttal to the substantial and credible evidence discussed in Horn Lake's Principal Brief establishing a present need for municipal services in the PAA and that Horn Lake has the ability to provide the needed municipal services. Horn Lake, p. 28-34. Rather, Walls erroneously posits that "Horn Lake does not contend that any of the factual findings of the Chancellor on this point are not supported by substantial and credible evidence." Walls, p. 32-33. However, Horn Lake's Principal Brief on this *indicium* clearly stated that "for the Chancellor to find that this *indicia* weighs against annexation is clearly erroneous and **is not supported by substantial and credible evidence.**" Horn Lake, p. 34. Accordingly, Walls' position that this Court should limit its review on this *indicium* is misplaced.

On the other hand, DeSoto County and the Walls Fire Protection District argue that the District provides "beyond adequate fire protection," and further that, pursuant to *Mississippi Code Ann.* § 19-5-175, Horn Lake would be legally prohibited from providing fire protection services in any portion of the District's territory annexed into the City. However, both arguments are flawed and not supported by the record or by any ruling of this Court. With regards to the District and the County's "legal authority" argument, the City of Horn Lake's position is fully set forth both in its Principal Brief, as well as in the "Other Factors" section of this Reply Brief.

Regarding the adequacy of existing fire protection in the PAA, the evidence submitted at trial clearly established that there is a present need for municipal-level fire protection in the PAA. T. 626-34, 982-83; H.L. 37, 38. The District, which operates on a primarily volunteer basis, simply cannot function at the level a full-time municipal-level fire department operates. Horn Lake, p. 31-32. On the other hand, the City of Horn Lake provides its citizens with an excellent level of municipal fire protection services 24 hours a day, 7 days a week, with full-time, paid firemen. T. 626-27; H.L. 39. The fact that the Mississippi State Rating Bureau

presently rates the fire protection provided by the City of Horn Lake at a Class 6, while the fire protection provided by the District in the PAA is rated at a Class 8, is irrefutable evidence that Horn Lake is providing a higher level of fire protection than the District. T. 143-44; H.L. 11, 40.

Further, it was established that the PAA has seen significant growth through the development of new neighborhoods and the expansion of existing neighborhoods, as well as through new commercial growth. T. 982-83; H.L. 26. In fact, since 2000, the PAA has seen a 37% increase in both population and dwelling units, and an increase in population density from 341 persons per square mile in 2000 to 469 persons per square mile in 2008. H.L. 26; T. 983-984. The fact that the PAA is experiencing increasing population density is clearly indicative of increased urban development in the PAA, and a corresponding need for municipal-level services, including municipal-level fire protection. T. 983. Moreover, the fact that the City of Horn Lake is presently being called under mutual aid requests to respond to fires in the PAA establishes that there is a need for municipal-level fire protection in the PAA. T. 632-34, 982.

As discussed at length in Horn Lake's Principal Brief, substantial and credible evidence on each of the factors set forth by this Court in *Winona* established that there is a need for municipal services in the PAA. *Winona*, 879 So. 2d at 984. Notably, while the County and the District dispute that there is a need for municipal-level fire protection in the PAA, no party contests the substantial and credible evidence establishing a need for other municipal services in the PAA.

The Chancellor's Opinion is simply not supported by substantial and credible evidence, is manifestly erroneous, and disregards the weight of the evidence establishing a need for municipal services in the PAA. For example, the evidence clearly established that Horn Lake presently serves some 779 dwelling units in the PAA with sanitary sewer service. H.L. 75. The Chancellor weighed this evidence against the City of Horn Lake on this *indicium* (as well as on

others) finding that there were no requests for sewage in the area (notably as a result of Horn Lake's efforts in the area). Certainly the fact that there are less requests for sewage services in the area sought to be annexed as a result of Horn Lake already serving 46% of the PAA cannot weigh against the reasonableness of the City's proposed annexation.

Moreover, this Court, in *City of Brookhaven*, found that the fact that the City of Brookhaven had extended municipal water and sewer infrastructure to the Brookhaven PAA was evidence that the Brookhaven PAA was in need of municipal services. *In re Enlarging, Extending, and Defining the Corp. Limits of the City of Brookhaven*, 957 So. 2d 382, 388-89 (Miss. 2007). Here, as in *City of Brookhaven*, Horn Lake has already extended municipal sewer infrastructure to the PAA, which evidences a need for municipal services throughout the PAA, including the City of Horn Lake's certificated sewer service area. For the trial court to find otherwise was manifest error.

F. The City of Horn Lake Has an Excellent Record of Past Performance.

With regards to the City of Horn Lake's past performance, the Town of Walls offers no substantive rebuttal to the significant issues raised by the City of Horn Lake in its Principal Brief with regards to the Chancellor's Opinion that this *indicium* does not "encourage or favor annexation." Walls, p. 34-35. As discussed in detail in Horn Lake's Principal Brief, the undisputed testimony and evidence introduced at the trial of this matter established that the City of Horn Lake has: (1) spent in excess of \$23,500,000 on capital projects throughout the City, including over \$12,000,000 on water and sewer projects and \$4,000,000 on street improvements, since its previous annexation in 2002 (T. 761; H.L. 21); (2) extended central sewer to 97.1% of the existing city (as well as 46% of the PAA) (H.L. 75; Horn Lake, p. 35); (3) extended municipal water service to 99.8% of the existing residences in the City (T. 740-41; H.L. 100); (4) constructed a \$7,000,000 park in the 2002 annexation area (T. 761; H.L. 21); (5) acquired,

fully staffed, and equipped a third fire station, as promised in its 2002 annexation, to serve the newly annexed citizens, as well as the existing city (T. 629, 682, 992-93); and (6) ensured that newly annexed citizens enjoyed the same Class 6 fire protection and high-level police protection, as well as all other municipal services, as were being enjoyed by the rest of the City (T. 682, 992-93).

The bottom line is that the City of Horn Lake has an excellent record of past performance in the delivery of promised services and improvements to its existing citizens, including residents and property owners of previously annexed areas. T. 990-97. For the Chancellor to disregard the substantial and credible evidence in the record on this *indicium* was manifest error.

G. The Economic or Other Impact Upon Those Who Live in or Own Property in the PAA Supports Annexation by the City of Horn Lake.

In support of the Chancellor's finding on this *indicium*, the Town of Walls relies heavily on the opinion of its urban and regional planning expert witness Chris Watson that Horn Lake's plan for the delivery of services and improvements to the PAA may require a tax increase. Walls, p. 37-38. However, while it was clearly established that Horn Lake's proposed annexation will not require a tax increase, even assuming *arguendo* that a tax increase was required, it is well settled that "the prospect of a tax increase is insufficient to defeat annexation." *Poole*, 908 So. 2d at 743. Moreover, it must be noted that the Chancellor does not discuss any purported tax increase in making his finding on this *indicium*, and Walls raises this argument purely to distract this Court from the significant issues raised in Horn Lake's Principal Brief. Horn Lake, pp. 37-39. Accordingly, Walls' argument is misplaced.

Likewise, Walls' position that the Chancellor properly weighed this *indicium* is flawed. For example, in reaching his conclusion that this *indicium* weighed against annexation, the Chancellor stated "however, with the exception of a small minority of homes in the area, [the residents and property owners of the PAA] will not receive central sewer services beyond that

already available.” Opinion, 20-21. However, the Chancellor was in error in finding this to weigh against annexation because the Chancellor disregarded the fact that sewer services are funded through user fees, not taxes (i.e., persons in the PAA who do not receive City sewer services do not pay for them). Accordingly, any residents in the PAA who either do not already receive sanitary sewer from the City of Horn Lake or who will not receive such services as a part of the City’s \$1,200,000 sanitary sewer improvement plan will not incur any adverse financial impact as a result of this annexation. H.L. 119.

Similarly, the Chancellor’s Opinion, finds that Horn Lake’s street lighting plan would not benefit residents of the PAA, because street lighting is proposed only in the “more densely developed areas which, to a certain extent, are already provided lighting by maintenance associations in the subdivision.” Opinion, 21. However, Exhibit H.L. 78 clearly depicts in green, streetlights which the City of Horn Lake has identified as existing in the PAA, and in red, new streetlights which the City of Horn Lake is proposing. As can be seen from Exhibit H.L. 78, the City of Horn Lake clearly identified areas throughout the PAA which were in need of street lighting, such as major intersections which are presently without lighting, and formulated a plan to address those areas. Further, with regards to existing street lights, the Chancellor disregards the clear testimony that, as a part of this annexation, the City of Horn Lake would take over the cost of both maintenance and electricity for all existing street lights in the PAA. T. 926-27; H.L. 78. The City’s street lighting plan would clearly benefit the residents and property owners of the PAA, and the Chancellor was in error finding otherwise.

Ultimately, the substantial and credible evidence at trial clearly established that the residents and property owners in the PAA will receive much improved, valuable municipal services in return for their tax dollars. It was established that as a result of annexation the residents and property owners of the PAA would receive:

(1) municipal-level fire protection (T. 1000; H.L. 39, 40, 41, 119); (2) municipal-level police protection through the implementation of two new police wards in the PAA and the hiring of eight additional police officers (T. 583, 1001; H.L. 64, 119); (3) municipal-level traffic control *via* the use of radar (T. 583; H.L. 63); (4) lower homeowner's insurance premiums as a result of Horn Lake's Class 6 fire rating (T. 997-1000; H.L. 29, 30, 42, 43, 48); (5) municipal-level solid waste collection (T. 1001; H.L. 119); (6) \$1,200,000 in sanitary sewer improvements (T. 1001; H.L. 73, 74); (7) municipal-level street and drainage maintenance (T. 1001; H.L. 119); (8) municipal-level street lighting, including the addition of 120 street lights throughout the PAA (T. 1002; H.L. 78, 119); (9) municipal-level parks and recreational services (T. 1002; H.L. 59); (10) municipal-level planning, zoning, building codes, and comprehensive planning (T. 1002; H.L. 81, 102, 105, 106); and (11) municipal-level code enforcement (T. 1001; H.L. 119).

For the Chancellor to find that this *indicium* weighed against annexation was manifest error and not supported by substantial and credible evidence.

H. Property Owners and Other Inhabitants of The Proposed Annexation Area Have for the Past, and Will in the Future Unless Annexed, Enjoy Economic and Social Benefits Provided by the City of Horn Lake Without Paying Their Fair Share of the Taxes.

Residents and property owners of the PAA certainly benefit from their proximity to the City and from the City's services without paying the additional taxes that support those services. T. 1007; Horn Lake, p. 40. For example, the City of Horn Lake regularly provides fire protection to the PAA by way of mutual aid calls. On this point, Walls argues that Horn Lake receives something of value in return for these calls, that being a mutually beneficial working relationship with fire departments in the area. In support of its position, Walls cites one instance of Horn Lake requesting mutual aid from the Walls Fire Protection District. However, the evidence in this case established over 29 instances of Horn Lake receiving requests from the District to respond to calls in the PAA (and another 14 inside the Town of Walls). H.L. 37. Simply put, Residents and property owners of the PAA are benefiting from Horn Lake's response to mutual aid calls without paying the taxes that support such services.

As set forth in Horn Lake's Principal Brief on this *indicium*, residents and property owners are benefiting from their proximity to the City of Horn Lake and from the City's services

without paying the additional taxes that support such services. The Chancellor was in error to find otherwise. Horn Lake, p. 40.

I. Other Factors -State Law Does Not Prohibit Annexation of a Statutorily-Created Fire Protection District Nor Horn Lake's Service in the Area.

The issue of which fire department has the right to provide fire protection services within annexed portions of fire protection districts created pursuant to *Miss. Code Ann.* §§ 19-5-151, *et seq.*, is not unique to the annexation proposed by the City of Horn Lake. It is further an issue upon which this Court has not rendered an opinion of which the undersigned is aware.

As previously stated in the City of Horn Lake's Principal Brief, it is undisputed that *Miss. Code Ann.* §§ 19-5-151, *et seq.*, does not prohibit a municipality from annexing territory located within the legal boundaries of a fire protection district. Rather, the Appellees contend that, if the trial court allowed Horn Lake's annexation into the Walls Fire Protection District, Horn Lake would be legally prohibited from rendering fire protection services in the annexed area.

In support of their position that, unless the District cedes jurisdiction for the provision of fire protection over annexed portions of its defined service area to the City of Horn Lake, the District retains the "sole authority" to respond to fires in those annexed areas, the County and the District rely upon *Op. Att'y Gen. Smith*, 2000 WL 799973 (Miss. A.G.). W.F.P.D., p. 9. However, following *Smith*, the Attorney General expounded on its interpretation of the statutory rights and responsibilities of the annexing municipality following annexation of fire district territory, stating:

Recently, we opined that until a fire protection district cedes its authority to respond, it is the "sole" responder to its district. MS AG Op., *Smith* (May 26, 2000). Thus, we opine that Summershill would be the **primary responder** to the particular area until a ceding of the area is duly adopted by the Summershill Fire District Commission. **However, this would not preclude, for example, the Olive Branch fire service from rendering assistance to Summershill, as city fire service is required in annexed areas** and is authorized by law beyond the corporate limits.

Op. Att'y Gen. Loveless, 2000 WL 1511922 (Miss. A.G.).

Accordingly, under *Loveless*, while the Walls Fire Protection District may retain its status as “primary responder” until it cedes jurisdiction to the City of Horn Lake, this would not prevent the City of Horn Lake from rendering assistance in the annexed area, “as city fire service is required in annexed areas.” *Id.* Furthermore, the District’s position directly conflicts with *Miss. Code Ann.* § 21-25-3(1), which provides, in part, that:

The governing authorities of municipalities shall have the power to provide for the prevention and extinguishment of fires, to organize, establish, operate, and maintain fire and hook and ladder companies, to provide for and maintain a fire department and system, and to regulate the same.

Accordingly, pursuant to *Miss. Code Ann.* § 21-25-3(1), the governing authorities of Horn Lake have the right to provide for the prevention and extinguishment of fires within the City. This right is unequivocal and is in place for the protection of the life and property of Horn Lake’s citizens. To this end, the City of Horn Lake developed a reasonable plan for delivering Class 6 fire protection to the residents and citizens of the PAA. H.L. 119. For the Chancellor to find that the presence of the Walls Fire Protection District weighed against the City’s proposed annexation was not supported by substantial and credible evidence and was in manifest error. Moreover, a volunteer Class 8 Fire District should never be an impediment to annexation by a municipality ready, willing, and able to provide Class 6 fire protection.

III. Conclusion

This Court has the authority, in appropriate cases, to modify or reverse an annexation on appeal. *In the Matter of the Extension of the Boundaries of the City of Jackson*, 551 So. 2d 861 (Miss. 1989); *City of Greenville v. Farmers, Inc.*, 513 So. 2d 932, 941 (Miss. 1987). The City of Horn Lake respectfully submits that the case before this Court is such a case.

The Chancellor committed manifest error in rendering his Opinion, finding the City of Horn Lake’s proposed annexation unreasonable in its entirety. The Chancellor’s Opinion is not

supported by substantial and credible evidence. The substantial and credible evidence submitted at trial, including nearly 100 exhibits and the testimony of numerous witnesses on behalf of the City of Horn Lake (none of which is cited a single time in the Chancellor's Opinion as to the reasonableness of Horn Lake's proposed annexation), established that Horn Lake's annexation is reasonable in its entirety. On its face, the Chancellor's Opinion disregards substantial evidence establishing reasonableness under the totality of the circumstances of Horn Lake's proposed annexation.

This Court should reverse the Chancery Court Judgment denying the annexation proposed by the City of Horn Lake, render judgment finding reasonable the City of Horn Lake's proposed annexation in its entirety, and remand with instructions to the DeSoto County Chancery Court to enter a judgment consistent with *Miss. Code Ann.* § 21-1-33 and the Opinion of this Court. In the alternative, this Court should reverse the Chancery Court's Judgment denying the City of Horn Lake's annexation in its entirety, render judgment finding reasonable the City of Horn Lake's annexation of the area for which it holds a Certificate of Public Convenience and Necessity for the provision of sanitary sewer service (the approximately 2.75 square miles of the PAA immediately adjacent to the City of Horn Lake's western boundary, in which the City of Horn Lake presently serves some 779 dwelling units with sanitary sewer, as depicted in purple on Exhibit H.L. 72), and remand with instructions to the DeSoto County Chancery Court to enter a judgment consistent with *Miss. Code Ann.* § 21-1-33 and the Opinion of this Court.

RESPECTFULLY SUBMITTED, this the 5th day of August, 2010.

BY: THE CITY OF HORN LAKE, MISSISSIPPI

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BY:


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CERTIFICATE OF SERVICE

I, J. Chadwick Mask, Attorney for the City of Horn Lake, Mississippi, do hereby certify that I have this day delivered via United States Mail, postage prepaid, a copy of the foregoing Reply Brief of the City of Horn Lake, Mississippi, to the following counsel and parties of record:

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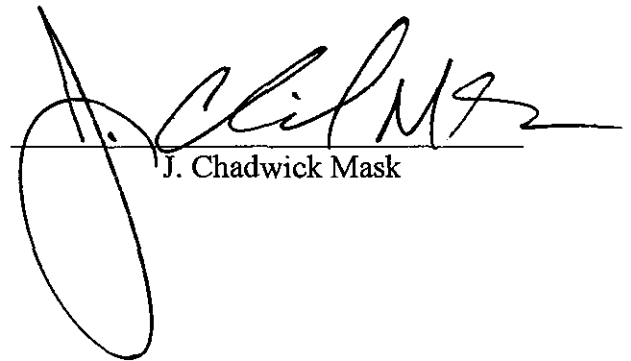
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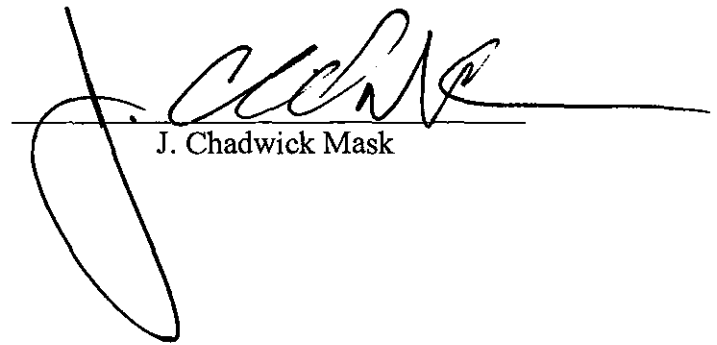
J. Chadwick Mask

CERTIFICATE OF SERVICE ON TRIAL COURT JUDGE

I, J. Chadwick Mask, Attorney for the City of Horn Lake, Mississippi, do hereby certify that I have this day delivered *via* United States Mail, postage prepaid, a copy of the foregoing Reply Brief of the City of Horn Lake, Mississippi, to the presiding trial court judge pursuant to *Mississippi Rule of Appellate Procedure* 25(b), at the following address:

Honorable Percy Lynchard, Jr.
P.O. Box 340
Hernando, Mississippi 386321

THIS the 5th day of August, 2010.


J. Chadwick Mask