

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

BRIEF OF APPELLANT CITY OF HORN LAKE, MISSISSIPPI

Oral Argument Requested

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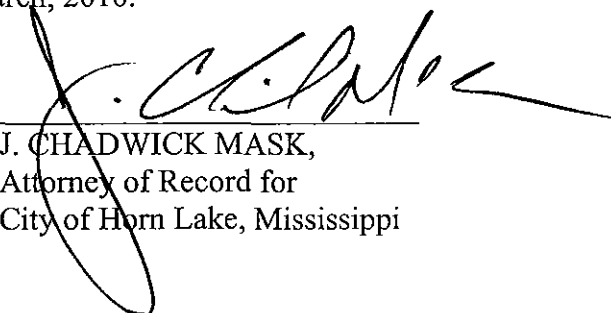
CERTIFICATE OF INTERESTED PERSONS

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

1. The City of Horn Lake, Mississippi, Appellant;
2. The Town of Walls, Mississippi, Appellee;
3. DeSoto County, Mississippi, Appellee;
4. The Walls Fire Protection District, Appellee;
5. J. Chadwick Mask, Clifton M. Decker, and the law firm of Carroll Warren & Parker PLLC, Attorneys for the City of Horn Lake, Mississippi;
6. Billy C. Campbell and the law firm of Baskin, McCarroll, McCaskill, & Campbell, P.A., Attorneys for the City of Horn Lake, Mississippi;
7. Jerry L. Mills and the law firm of Pyle, Mills, Dye, & Pittman, P.A., Attorneys for the Town of Walls, Mississippi;
8. Anthony E. Nowak, and Joseph D. Neyman, Jr., and the law firm of Smith Phillips Mitchell Scott & Nowak, LLP, Attorneys for DeSoto County, Mississippi;

9. Paul R. Scott and the law firm of Smith Phillips Mitchell Scott & Nowak, LLP, Attorneys for Walls Fire Protection District;
10. Barbara Coggin, Dorothy J. Coggin, John Fairchild, Sammy Parrish, W.A. Gartrell, Ginger Gartrell, James Hawkins, Billy Boling, Stephen Cameron, Shirley Hall, T.A. Campbell, Barbara Campbell, Rebecca Cameron, Merria Casey, Monty Westmoreland, Paul Weeks, Mabel Weeks, Wilson Stover, and Wathena Stover, Objectors.

SO CERTIFIED, this the 15th day of March, 2010.



J. CHADWICK MASK,
Attorney of Record for
City of Horn Lake, Mississippi

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
I. STATEMENT OF THE ISSUE	1
II. STATEMENT OF THE CASE	1
A. Statement of Facts	1
B. Statement of the Law	3
C. Standard of Review	5
III. SUMMARY OF THE ARGUMENT	5
IV. ARGUMENT	7
A. The Decision of the Chancellor to Deny the Annexation Proposed by the City of Horn Lake in its Entirety Is Manifestly Wrong and Is Not Supported by Substantial and Credible Evidence.....	7
1. The City of Horn Lake Has Demonstrated a Need To Expand	8
2. The Proposed Annexation Area Is in Horn Lake's Path of Growth	15
3. There Are Potential Health Hazards in the Proposed Annexation Area	19
4. The City of Horn Lake Has the Financial Ability to Make Improvements and Provide Municipal Services to the Proposed Annexation Area	21
5. There is a Need for Zoning and Planning in the Proposed Annexation Area	27
6. There Is a Need for Municipal Services in the Proposed Annexation Area and Horn Lake Has the Ability to Provide the Needed Services.....	28
7. There Are No Natural Barriers Between the City of Horn Lake and the Proposed Annexation Area.....	34
8. The Past Performance and Time Element Involved in Horn Lake's Delivery of Services to Its Present Residents Suggest that the Annexation Proposed by the City of Horn Lake Is Reasonable	34

9. The Economic or Other Impact Upon Those Who Live in or Own Property in the Proposed Annexation Area Supports Annexation by the City of Horn Lake	37
10. The Annexation Proposed by the City of Horn Lake Will Not Have an Adverse Impact on the Voting Strength of Any Protected Minority Groups	39
11. Property Owners and Other Inhabitants of the Proposed Annexation Area Have in 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 Taxes.....	40
12. Other Factors Support Horn Lake’s Proposed Annexation	41
V. CONCLUSION	44
CERTIFICATE OF SERVICE	46

TABLE OF AUTHORITIES

CASES

<i>City of Jackson v. Byram Incorporators</i> , 16 So. 3d 662 (Miss. 2009)	4, 11
<i>Enlargement and Extension of Mun. Boundaries of City of Meridian</i> , 662 So. 2d 597 (Miss. 1995)	5, 16
<i>Enlargement and Extension of the Municipal Boundaries of the City of Clinton</i> , 955 So. 2d 307 (Miss. 2007).....	10, 11
<i>In Re Enlargement and Extension of the Mun. Boundaries of Biloxi</i> , 744 So. 2d 270 (Miss. 1999).....	3, 5
<i>In Re Extension and Enlargement of the Boundaries of Laurel</i> , 863 So. 2d 968 (Miss. 2004)	4
<i>In Re Extension of the Boundaries of City of Winona</i> , 879 So. 2d 966 (Miss. 2004)	8, 15, 19, 20, 21, 27, 28, 29, 34, 37
<i>In Re Extension of Boundaries of City of Ridgeland</i> 651 So. 2d 548 (Miss. 1995).....	12
<i>In Re Extension of the Boundaries of the City of Batesville</i> , 760 So. 2d 697 (Miss. 2000)	5
<i>In Re Extension of the Boundaries of the City of Columbus</i> , 644 So. 2d 1168 (Miss. 1994).....	5, 34, 37, 40
<i>In the Matter of the Enlargement and Extension of the Corporate Limits and Boundaries of the City of Southaven</i> , 5 So. 3d 375 (Miss. 2009)	8, 15, 17, 19, 21, 28
<i>In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Clinton</i> , 920 So. 2d 452 (Miss. 2006)	5
<i>In the Matter of the Extension of the Boundaries of the City of Hattiesburg</i> , 840 So. 2d 69 (Miss. 2003).....	4, 5, 12, 18, 19, 20, 36, 37, 39, 43
<i>Matter of City of Horn Lake</i> , 630 So. 2d 10 (Miss. 1993).....	12
<i>Matter of Enlargement and Extension of the Mun. Boundaries of the City of Jackson</i> , 691 So. 2d 978 (Miss. 1997).....	3
<i>Matter of Enlargement and Extension of the Municipal Boundaries of the City of Southaven</i> , 864 So. 2d 912 (Miss. 2003).....	10, 11, 33

<i>Matter of the Enlargement and Extension of the Mun. Boundaries of the City of Madison</i> , 650 So. 2d 490 (Miss. 1995).....	4, 5, 12
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STATUTES

<i>Mississippi Code Annotated</i> §§ 19-5-151, <i>et seq.</i>	31, 41
<i>Mississippi Code Annotated</i> § 19-5-175	41
<i>Mississippi Code Annotated</i> § 21-1-15	2
<i>Mississippi Code Annotated</i> §§ 21-1-27, <i>et seq.</i>	2
<i>Mississippi Code Annotated</i> § 21-1-31	2
<i>Mississippi Code Annotated</i> § 21-1-33	44
<i>Mississippi Code Annotated</i> § 21-25-3	42
<i>Mississippi Code Annotated</i> § 21-33-303	23

OTHER

Op. Att’y Gen. Ellis, 1989 WL 503581 (Miss. A.G.)	42
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I. STATEMENT OF THE ISSUE

- A. The Lower Court Committed Manifest Error in Finding that the Annexation Proposed by the City of Horn Lake was Unreasonable in its Entirety. Substantial and Credible Evidence Supported the Reasonableness of Horn Lake's Proposed Annexation and, by Failing to Consider the Same, the Chancellor Committed Reversible Error.**

II. STATEMENT OF THE CASE

A. Statement of the Facts

This is an appeal from the Final Judgment of the DeSoto County Chancery Court denying in all respects a Petition by the City of Horn Lake, Mississippi, for approval of the enlargement and extension of its municipal boundaries.

The proceedings below involved competing annexation petitions filed by the Town of Walls, Mississippi, and the City of Horn Lake, Mississippi. The Town of Walls, Mississippi, filed a Petition for the Approval, Ratification and Confirmation of the Enlargement and Extension of the Municipal Boundary of the Town of Walls, Mississippi, on December 20, 2007, seeking annexation of certain territory located in DeSoto County, Mississippi. On May 13, 2008, the City of Horn Lake filed its Complaint in the Nature of a Petition for the Ratification, Approval, and Confirmation of an Ordinance Enlarging, Extending, and Defining the Corporate Limits and Boundaries of the City of Horn Lake, DeSoto County, Mississippi, seeking the annexation of certain territory in DeSoto County, Mississippi. A significant portion of the territories sought to be annexed by the two municipalities is the same. Accordingly, by Order dated July 28, 2008, the DeSoto County Chancery Court consolidated these annexation proceedings. Trial of the consolidated matters took place on February 16, 2009, through February 21, 2009, at the DeSoto County Courthouse in Hernando, Mississippi.

Procedurally, the City of Horn Lake's proposed annexation began on April 15, 2008, when the Mayor and Board of Aldermen of Horn Lake, Mississippi, duly adopted an Ordinance

enlarging, extending, and defining the corporate limits and boundaries of the City of Horn Lake, specifying the improvements to be made in the annexed territory and the municipal or public services to be rendered therein, and for other purposes related thereto (hereinafter "Horn Lake Annexation Ordinance" or "Ordinance"). The Ordinance defines with certainty the additional land and territory proposed to be included in the corporate limits of Horn Lake, and also defines the entire boundary of the municipality as changed. H.L. 5.¹ By adopting the Annexation Ordinance, the Horn Lake Board of Aldermen made a legislative finding that the City's proposed annexation was required by public convenience and necessity.

Thereafter, on May 13, 2008, the City of Horn Lake filed with the Chancery Court of DeSoto County, Mississippi, a Complaint in the Nature of a Petition for the Ratification, Approval, and Confirmation of an Ordinance Enlarging, Extending, and Defining the Corporate Limits and Boundaries of the City of Horn Lake, DeSoto County, Mississippi ("Annexation Petition"). H.L. 5; C.P. 641-54. The City of Horn Lake attached as exhibits to its Annexation Petition, a certified copy of its April 15, 2008 Ordinance, as well as a map and plat of the municipal boundaries of the City of Horn Lake as they would exist in the event the Ordinance was ratified, approved, and confirmed by the Chancery Court. H.L. 5; C.P. 641-54. Thereafter, in compliance with *Miss. Code Ann.* §§ 21-1-15 and 21-1-31, the City of Horn Lake published notice, posted notice, and served summons on existing municipalities within three miles of the Proposed Annexation Area ("PAA"). H.L. 2, 67; C.P. 672-74, 675-76, 677-79, 691-93, 694-96. The Town of Walls, Mississippi, the City of Southaven, Mississippi, DeSoto County, Mississippi, and the Walls Fire Protection District filed objections to the City of Horn Lake's

¹ For purposes of this 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. Citations to any trial court pleadings will be cited as "C.P. 1, C.P. 2," etc.

proposed annexation. C.P. 680-83, 684-86, 687-89, 697-700. Subsequently, the City of Southaven withdrew its objection to Horn Lake's proposed annexation. C.P. 574-77.

The Chancery Court of DeSoto County found that the City of Horn Lake had complied with all of the statutory jurisdictional requirements set forth in *Miss. Code Ann.* §§ 21-1-27, *et seq.*, regarding the commencement of annexation proceedings, as well as all applicable Rules of Civil Procedure, and that the court had jurisdiction to hear the matter. C.P. 594-95.

The City of Horn Lake's Petition seeks to annex approximately 9.1 square miles of unincorporated territory located adjacent to and west of the existing municipal boundaries of the City of Horn Lake. H.L. 5, 11, 26.

Following a consolidated trial that lasted six days, from February 16, 2009 to February 21, 2009, the DeSoto County Chancery Court, Chancellor Percy L. Lynchard, Jr., presiding, took the case under advisement, with no proposed findings of fact and conclusions of law to be submitted by the parties. On February 27, 2009, the Chancellor entered the Opinion of the Court denying both the annexation proposed by the City of Horn Lake and the annexation proposed by the Town of Walls in their entirety. The Final Judgment denying the City of Horn Lake's proposed annexation was entered on March 24, 2009. C.P. 630-32. The City of Horn Lake thereafter timely filed its Notice of Appeal on April 2, 2009. C.P. 633-36. The Town of Walls did not appeal the Final Judgment of the Chancery Court with respect to its proposed annexation.

B. Statement of the Law

This Court has held that "annexation is a legislative affair." *In Re Enlargement and Extension of the Mun. Boundaries of Biloxi*, 744 So. 2d 270, 277 (Miss. 1999). The "role of the judiciary in annexations is limited to one question: whether the annexation is reasonable." *Matter of Enlargement and Extension of the Mun. Boundaries of the City of Jackson*, 691 So. 2d 978, 980 (Miss. 1997). Accordingly, "the only power vested in the court is in the determination

of reasonableness or unreasonableness of an enlargement and whether it should be reduced.” *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 683 (Miss. 2009) (citing *In re Extension & Enlargement of the Boundaries of Laurel*, 863 So. 2d 968, 972 (Miss. 2004). If, under the totality of the circumstances, taking into account the twelve *indicia* of reasonableness set out in earlier precedent, this Court determines that the annexation is reasonable, it must be approved. *In the Matter of the Extension of the Boundaries of the City of Hattiesburg*, 840 So. 2d 69, 81-82 (Miss. 2003).

To determine the reasonableness of an annexation, this Court has identified twelve “*indicia* of reasonableness” which are not separate, distinct tests, but rather are to be considered under the totality of the circumstances. *Matter of the Enlargement and Extension of the Mun. Boundaries of the City of Madison*, 650 So. 2d 490, 494-95 (Miss. 1995). These *indicia* of reasonableness are as follows: (1) the municipality’s need to expand; (2) whether the area sought to be annexed is reasonably within a path of growth of the city; (3) potential health hazards from sewage and waste disposal in the annexed areas; (4) the municipality’s financial ability to make the improvements and furnish the municipal services promised; (5) the need for zoning and overall planning in the area sought to be annexed; (6) the need for municipal services in the area sought to be annexed; (7) whether there are natural barriers between the city and the proposed annexation area; (8) the past performance and time element involved in the city’s provision of services to its present residents; (9) the economic or other impact of the annexation upon those who live in or own property in the proposed annexation area; (10) the impact of the annexation upon the voting strength of protected minority groups; (11) whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and in the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy economic and social benefits of the municipality without paying their fair

share of taxes; and (12) any other factors that may suggest reasonableness. *Biloxi*, 744 So. 2d at 278; *Enlargement and Extension of Municipal Boundaries of City of Meridian*, 662 So. 2d 597, 608 (Miss. 1995); *Madison*, 650 So. 2d at 494.

This Court has stated that “fairness to all parties has always been the proper focus of our reasonableness inquiry” and therefore, “municipalities must demonstrate through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness.” *Hattiesburg*, 840 So. 2d at 82 (citing *In Re Extension of the Boundaries of the City of Columbus*, 644 So. 2d 1168, 1171 (Miss. 1994)).

C. Standard of Review

This Court may reverse a chancellor’s determination that an annexation is either reasonable or unreasonable if that decision is manifestly erroneous or is unsupported by substantial and credible evidence. *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Clinton*, 920 So. 2d 452, 454 (Miss. 2006) (citing *In re Extension of the Boundaries of the City of Batesville*, 760 So. 2d 697, 699 (Miss. 2000)).

III. SUMMARY OF THE ARGUMENT

The decision of the DeSoto County Chancery Court to deny the annexation proposed by the City of Horn Lake is manifestly erroneous and is not supported by substantial and credible evidence.

As set forth in detail below, the substantial and credible evidence submitted at the trial of this matter clearly established that the City of Horn Lake’s proposed annexation is reasonable. However, that evidence, including both trial exhibits and witness testimony elicited on behalf of the City of Horn Lake’s annexation, was utterly disregarded by the trial court. During the course of the six-day trial of this matter, the City of Horn Lake introduced nearly 100 trial exhibits

which demonstrated the reasonableness of its proposed annexation. **The Chancellor's Opinion does not reference a single one of these exhibits. Not one.**

Further, during trial, the City of Horn Lake tendered multiple witnesses who testified as to the reasonableness of the City'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 field of civil engineering, urban and regional planning, and municipal finance. The trial court did not cite or reference **ANY** of this critical trial witness testimony in its Findings. Simply put, the Chancellor's decision is not supported by substantial and credible evidence, and it must, therefore, be reversed.

The substantial and credible evidence before the Chancellor demonstrated that the twelve *indicia* of reasonableness weigh heavily in favor of the annexation proposed by the City of Horn Lake. The City of Horn Lake is a fiscally healthy municipality which has experienced significant growth within its city limits over recent years. The City of Horn Lake demonstrated that its municipal departments have been able to provide a very high level of municipal services and improvements to its present citizens. Further, the City demonstrated through the Services and Facilities Plan adopted by its Board of Aldermen that it is fully committed and financially able to deliver this high level of municipal services and improvements to the residents and property owners of the Proposed Annexation Area in return for their tax dollars. H.L. 119.

The City of Horn Lake has further demonstrated a financial commitment to the proposed annexation area by way of municipal sewer infrastructure improvements which are already in the ground and serving residents of the PAA today. Those portions of the Proposed Annexation Area which are currently served by the City of Horn Lake's sewer system are clearly within the City's path of growth, and annexation of that portion of the PAA by Horn Lake is unequivocally reasonable. H.L. 72.

The Chancellor's opinion that the annexation proposed by the City of Horn Lake is unreasonable and must be denied in all respects and areas is manifestly wrong and not supported by substantial, credible evidence. The Opinion rendered by the Chancellor in this matter presents this Court with the opportunity to draw the line as to when an opinion is supported by "substantial and credible evidence." The Chancellor in this matter rendered his opinion without reference to a single exhibit introduced by the City of Horn Lake. Further, the Chancellor rendered his opinion without reference to the testimony of any of the multiple witnesses who testified at trial in support of the reasonableness of Horn Lake's proposed annexation. The City of Horn Lake submits that "substantial and credible" evidence requires more.

IV. ARGUMENT

A. The Decision of the Chancellor to Deny the Annexation Proposed by the City of Horn Lake in Its Entirety Is Manifestly Wrong, and Is Not Supported by Substantial and Credible Evidence

The trial court found that "the application for expansion and annexation of the proposed area by the City of Horn Lake is not reasonable and is denied as to all areas so sought." C.P. 626. Upon consideration of the evidence presented at the trial of this matter, in light of the twelve *indicia* of reasonableness set forth by this Court, the City of Horn Lake submits that the Chancellor's decision to deny Horn Lake's proposed annexation in its entirety is manifestly wrong. The Chancellor's opinion does not cite any of the nearly 100 exhibits submitted in support of Horn Lake's proposed annexation, nor to the testimony of a single witness who testified in support of the same.

As discussed below, the evidence submitted by the City of Horn Lake on each of the *indicia* of reasonableness overwhelmingly supported the reasonableness of the City's proposed annexation. Accordingly, the City of Horn Lake submits that, under the totality of the circumstances, the annexation proposed by the City is reasonable and should have been approved

by the Chancellor below. Given the substantial and credible evidence presented at trial, the Chancellor's finding that Horn Lake's annexation is not reasonable is manifestly wrong and must be reversed.

1. The City of Horn Lake Has Demonstrated a Need To Expand.

When determining a city's need for expansion, this Court has previously outlined several factors which should be considered, to wit:

(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.

In the Matter of the Enlargement and Extension of the Corporate Limits and Boundaries of the City of Southaven, 5 So. 3d 375, 377 (Miss. 2009) ("Southaven II") (citing *In Re Extension of the Boundaries of City of Winona*, 879 So. 2d 966, 974 (Miss. 2004)).

On this indicium, the Chancellor found that the City of Horn Lake did not have a need to expand. C.P. 597-601. The Chancellor made this finding without citing to a single piece of evidence before the court, despite the fact that Horn Lake presented substantial and credible evidence as to each of the factors set forth by this Court in *Winona* in support of its need to expand. The Chancellor's finding on this indicium is manifestly wrong and is not supported by substantial and credible evidence.

Spillover Development into the Proposed Annexation Area.

Michael Slaughter, an expert in the fields of civil engineering, urban and regional planning, and municipal finance, testified that spillover development from the City of Horn Lake into the Proposed Annexation Area was occurring. Specifically, Mr. Slaughter cited subdivisions such as the Lake Forest Subdivision in the PAA, which is currently being served

with sanitary sewer by the City of Horn Lake, as well as a CVS Drugstore which recently relocated to the corner of Highways 301 and 302, just outside the current city limits, as examples of spillover development currently occurring in the PAA. T. 849-51; H.L. 50, 79. The evidence introduced at trial further indicates that the population of the PAA has increased by 37.7% between the years 2000 and 2008, with its population density increasing from 341 persons per square mile to 469 persons per square mile during that same time period. H.L. 26.

The Chancellor's opinion on the issue of spillover development states:

However, it must be noted that these developments were in place and largely developed prior to Horn Lake's 2002 annexation which extended its municipal boundaries along that state highway for a period of one and a half to two miles. A municipality can hardly be credited with spillover growth when it races to within a particular development which already exists and then claims that it exceeded and "spilled over" from its municipal boundary.

C.P. 598. However, in making this finding, the Chancellor defined spillover development to be "where development occurred within a municipality and that development exceeds that municipality's boundaries." As Christopher Watson, the expert witness for the Town of Walls, testified, this is not the appropriate method of defining spillover development in this case. T. 378-79. As Mr. Watson testified, the more appropriate method of defining what is and what is not spillover development in this case is to give consideration to the location of the development. *Id.*

Giving consideration to the location of development occurring throughout the PAA, it is clear that spillover development from the City of Horn Lake into the PAA is taking place. H.L. 50. Residential developments such as Lake Forest, and commercial establishments such as the newly relocated CVS drugstore, are clear examples of spillover development from the City of Horn Lake into the PAA. T. 849-51; H.L. 50, 79. Moreover, Mr. Slaughter testified that there has been continued growth in subdivisions located in the PAA which are currently served

sanitary sewer by the City of Horn Lake. T. 850. The Chancellor's Opinion completely ignored the weight of this evidence.

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

From 2003 to 2008, the population of the City of Horn Lake grew an estimated 16.8%, from 20,946 citizens to 24,470 citizens. H.L. 26, 66; T. 852-53. Moreover, the City of Horn Lake is currently the most densely populated municipality in DeSoto County with an estimated 1,501 persons per square mile, exceeding the next most densely populated municipality in the County, the City of Southaven, by some 266 persons per square mile. H.L. 26, 65; T. 854. The Chancellor's opinion fails to address the population density of the City of Horn Lake and is a departure from this Court's previous recognition of the impact a city's high population density has on its need to expand. For example, in *Enlargement and Extension of the Municipal Boundaries of the City of Clinton*, 955 So. 2d 307, 315 (Miss. 2007), this Court cited with approval testimony that Clinton's population density of approximately 1,000 persons per square mile was "very dense" for a southern municipality and supported the City's need to expand.

The City's population density is attributable in part to the tremendous internal growth the City of Horn Lake has experienced in recent years. The evidence before the court below established that from 2000 through 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 million. T. 875-879; H.L. 16, 17, 18, 19, 20.

The Chancellor's opinion references four developments in the City of Horn Lake which have been commenced since the year 2000, specifically Dancy Landing Planned Unit Development, Willow Point, Nicole Place Planned Unit Development, and Turman Farms, and holds that these developments remain "largely vacant and undeveloped." C.P. 598. Vacant lots alone however, are not indicative that a municipality has no need to expand. *Matter of*

Enlargement and Extension of the Municipal Boundaries of the City of Southaven, 864 So. 2d 912, 921 (Miss. 2003) (“Southaven I”). Moreover, the evidence before the Chancellor demonstrated that in excess of 40 new commercial and residential developments have been commenced within the City since the year 2000. H.L. 62.

The City of Horn Lake does not dispute that residential developments have been impacted by the downturn in the national economy. T. 786-87. However, as City Planning Director Anita Rainey testified, prior to the national economic downturn, the City’s issuance of new residential permits was strong. T. 789. Further, both Rainey and Mike Slaughter testified that Horn Lake has continued to have a steady issuance of commercial building permits through the economic downturn. T. 785-86, 875-76; H.L. 20. Moreover, the Chancellor apparently disregarded the fact that the City of Horn Lake, with an estimated 1,501 persons per square mile, is the most densely populated municipality in the entire County. H.L. 26, 65; T. 854. As noted above, the Mississippi Supreme Court has repeatedly recognized the significance of population density in evaluating a municipality’s need to expand. Here, the Chancellor’s opinion gives no consideration to this critical point.

As further indication of the significance of population density, this Court has upheld annexations by cities experiencing declining population where the annexing city has a high population density that could be alleviated through annexation. *See City of Jackson*, 16 So. 3d at 684-85. Here, unlike in *City of Jackson*, the City of Horn Lake has a population which is steadily increasing. H.L. 26, 66. Moreover, the City of Horn Lake presently has a population density exceeding that which was found by this Court to be “very dense” in *City of Clinton* by an estimated 501 persons per square mile. *City of Clinton*, 955 So.2d at 315; H.L. 26, 65.

The City of Horn Lake's Remaining Vacant Land and Need for Developable Land.

The evidence before the court below established that the City of Horn Lake is in need of vacant, developable land. H.L. 94, 95; T. 856-59. Currently, 56.4% of the City of Horn Lake is completely developed. H.L. 95; T. 858. Of the remaining 43.6%, another 13.5% of the vacant land is constrained from development, in whole or in part, due to the flood plain and floodway, severe slopes on the lands outside of the flood plain and floodway, as well as utility easements. H.L. 94, 95; T. 856-59. Accordingly, only 30.1% of the total land area of the City of Horn Lake is vacant, unconstrained land which is suitable for development. H.L. 95; T. 857-59.

This Court has previously declined to set an absolute amount of usable vacant land that would prevent annexation. *Hattiesburg*, 840 So. 2d at 85. In fact, 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. *Id.* See also *In Re Extension of the Boundaries of City of Ridgeland*, 651 So. 2d 548, 554-56 (Miss. 1995); *Madison*, 650 So. 2d at 496; *Matter of City of Horn Lake*, 630 So. 2d 10, 18 (Miss. 1993). Here, the City of Horn Lake, with only 30.1% of its total land area being vacant and unconstrained, is well within the bounds of usable land which this Court has previously approved as indicating a need to expand. Certainly, if percentages of vacant land ranging from 43 to 59% have been determined by this Court to be reasonable for municipal annexation, then the City of Horn Lake's remaining vacant, developable land of 30.1% must be indicative of a city in need of additional developable land.

The City of Horn Lake's Limitation Due to Geography and Surrounding Cities.

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; T. 868-871. Specifically, Horn Lake's entire eastern and northern boundaries are bordered by the existing municipal boundaries of the City of Southaven. H.L. 44. There is,

therefore, no territory adjacent to the existing boundaries of the City of Horn Lake in which it could expand east or north. H.L. 44.

While there remains an unincorporated buffer of territory between the existing boundaries of the City of Horn Lake and the Town of Walls to the west and the City of Hernando to the south, these municipalities nonetheless serve as an impediment to future growth by the City of Horn Lake. Moreover, Horn Lake, already the most densely populated municipality in DeSoto County, is continuing to experience population growth. H.L. 26, 66. With Highway 302, Nail Road, and Church Road, three major east-to-west corridors extending from the City into the PAA, experiencing both significant commercial and residential growth, the Town of Walls serves as a major threat to the City's future ability to expand to the west along one of its primary paths of growth.

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

The Chancellor's opinion on this indicium notes that the PAA is subject to planning and zoning provided by DeSoto County, Mississippi. As discussed *infra* with respect to the indicium the need for zoning and overall planning in the annexation area, the record below establishes that DeSoto County has a good county-level planning and zoning department. T. 861. However, the record also establishes that the City of Horn Lake has an excellent municipal-level planning and zoning department. T. 861. Accordingly, both the County and the City are quite capable of providing the needed planning and zoning in the PAA, and this sub-factor should neither weigh for, nor against the City of Horn Lake's need to expand. Rather, as applied to the facts of the underlying case, this sub-factor should be annexation neutral.

Increased Traffic Counts.

The Chancellor's opinion fails to address the sub-factor increased traffic counts. However, evidence was introduced at trial that indicated that traffic counts around the City of

Horn Lake and the PAA were increasing. H.L. 116. Michael Slaughter testified that in making his determination that the City of Horn Lake had a need to expand, he reviewed traffic counts throughout the City and the PAA to determine the impact that growth in both DeSoto County and Horn Lake was having on traffic in the PAA. T. 866; H.L. 116. Mr. Slaughter testified that there had been a general increase in traffic counts around Horn Lake and the PAA, and that this was a factor which weighed in favor of annexation by the City of Horn Lake. T. 866. Again, the Chancellor's finding ignores the substantial and credible evidence on this factor.

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

The Chancellor's opinion noted that "there is in Horn Lake, as in any municipality, a need to maintain and expand the city's tax base for financial reasons." C.P. 600. Moreover, the testimony of Mike Slaughter at trial was that Highway 302, also known as Goodman Road, which runs east-to-west through the City of Horn Lake and extends into the PAA, serves as a major growth corridor for the City. T. 868. Mr. Slaughter testified that residential growth is already occurring along Highway 302 and that there is potential for future commercial growth along the corridor as well. T. 868. It was Mr. Slaughter's expert opinion that, as the City's comprehensive plan defines the west as a future growth area, and given the major transportation corridors that extend east and west, including Highway 302, Nail Road, and Church Road, it is important to protect and expand the City's tax base by extending its boundaries to include the PAA. T. 868. Accordingly, this sub-factor weighs in favor of annexation by the City of Horn Lake.

Environmental Influences.

The only reference in the Chancellors opinion to this sub-factor is that there "appear to be no environmental influences which affect the proposed area of annexation" C.P. 600. The evidence submitted at trial however, was that approximately 12.9% of the remaining vacant land

inside the City of Horn Lake is subject to some type of environmental influence which could impede development inside the City, such as the floodplain or flood way, as well as severe slopes. T. 873-74; H.L. 94, 95. Further, as environmental influences relate to the proposed annexation area, it was undisputed that the soil conditions in the PAA are not conducive to the use of septic tanks as a method of sewage disposal. T. 899-900; H.L. 76. Accordingly, the record established environmental influences both bearing on the City and its remaining vacant land, as well as on the proposed annexation area.

The evidence and testimony clearly demonstrate that the City of Horn Lake has met its burden of proving that it has a need to expand its boundaries. The Chancellor was manifestly wrong in his determination that no need to expand exists, a determination that is not supported by substantial and credible evidence, and is against the weight of the evidence and testimony below. Taking into consideration the above sub-factors previously identified by this Court as being relevant when considering a municipality's need to expand, the City of Horn Lake clearly met its burden and, accordingly, this factor weighs in favor of annexation.

2. The Proposed Annexation Area Is in Horn Lake's Path of Growth.

This Court has held that a municipality "need only show that the areas desired to be annexed are in 'a' path of growth." *Southaven II*, 5 So. 3d at 378 (citing *Winona*, 879 So. 2d at 974). This does not mean that the area is "the most urgent or even the city's primary path of growth." *Id.* Further, this Court has set forth a number of factors to be considered when determining a city's path of growth, including:

- (1) Spillover development into the proposed annexation area; (2) whether the proposed annexation area is immediately adjacent to the city; (3) limited area available for expansion; (4) interconnection by transportation corridors; (5) increased urban development in the annexation area; (6) geography; and (7) subdivision development.

Id. With respect to the above sub-factors, this Court has previously stated that the “most important factors when determining path of growth are the adjacency of the proposed annexation area to the city, accessibility of the proposed annexation area by city streets, and spillover of urban development into the proposed annexation area. *Meridian*, 662 So. 2d at 612-613.

With respect to the path of growth *indicia*, the Chancellor found as follows:

Considering all of the sub-factors previously found pertinent by the Mississippi Supreme Court, the Court finds that the proposed area of annexation for Horn Lake in fact lies within its path of growth. This *indicia* favors annexation by Horn Lake.

As set forth below, the substantial and credible evidence at trial supports the Chancellor’s finding on this indicium.

Adjacency and Interconnection by Transportation Corridors.

The proposed annexation area is immediately adjacent to the existing City of Horn Lake, a factor which shows that expansion into the area is a logical and natural extension of the City. T. 882; H.L. 11, 50. Further, the evidence established that the PAA is readily accessible by existing, in-use city streets such as Goodman Road, DeSoto Road, Nail Road, and Church Road. T. 884, H.L. 11, 50.

Spillover and Increased Urban Development.

With respect to increased urban development, the evidence established that from 2000 to 2008, the PAA experienced a 37% increase in both dwelling units and population, as well as a population density increase from 341 persons per square mile to 469 persons per square mile. T. 885-87; H.L. 26.

Subdivision development has likewise occurred throughout the PAA, and particularly in areas served with sanitary sewer by the City of Horn Lake. T. 888-89; H.L. 50, 79. Specifically, expert witness Michael Slaughter noted the Lake Forest subdivision as an example of subdivision development occurring in the PAA, with Lake Forest being adjacent to and

contiguous with the City of Horn Lake, and being served with sanitary sewer by the City. T. 888-89; H.L. 50. Other examples of subdivision development throughout the PAA include Delta Bluff, The Estate of Hickory Forest, Poplar Forest, Ranch Meadows, Hallum Estates, Rosemary Woods, Scenic Hollow, Hughey Meadows, and Primrose Estates, to name a few. T. 888-89; H.L. 50, 79.

Mr. Slaughter testified that the level of development that is adjacent to the City of Horn Lake, as well as the major east, west transportation corridors that lead from the City into the PAA, clearly indicates that the PAA is experiencing spillover growth from the City and that it is one of the City's primary paths of growth. T. 849-851, 881-82; H.L. 50.

Geography and Limited Areas Available for Expansion.

Mr. Slaughter testified that the City of Southaven caps the entire northern boundary of the existing City of Horn Lake, and thereby prevents Horn Lake from growing any further north.² T. 882-83; H.L. 44. Southaven likewise borders Horn Lake's entire eastern boundary, cutting off the potential for any future eastern growth. T. 883; H.L. 44. Horn Lake's only remaining potential paths of growth are to the south, to the extent that it is not impeded by the existing boundaries of Hernando and Southaven, or to the west for a distance of some two to three square miles before hitting the existing boundaries of the Town of Walls. T. 883-84; H.L. 44. Accordingly, existing municipalities surrounding Horn Lake result in extremely limited areas available for expansion.

Other Path of Growth Indicators.

Presently, the City of Horn Lake operates three fire stations within the existing city, with Station 3 being located across Highway 301 from the PAA. H.L. 40. The City has secured

² Prior to the trial of this matter, the existing City of Southaven boundaries capped some 3 square miles of Horn Lake's northern boundary, with an annexation pending in this Court that proposed to extend Southaven's boundaries an additional 2 square miles to the west along Horn Lake's northern boundary, thereby completely cutting off Horn Lake's northern path of growth. On January 15, 2009, this Court approved Southaven's pending annexation (*See, In re Enlargement and Extension of the Boundaries of the City of Southaven*, 5 So. 3d 375 (Miss. 2009)).

funding and coordinated with the Mississippi State Rating Bureau for the relocation of Station 3 to a site in the proposed annexation area. T. 893; H.L. 40.³ Slaughter testified that this indicated, from a planning standpoint, that this station was strategically placed by the city to continue its westward path of growth, as well as to continue to serve the City's western growth areas. T. 893-94.

The Mississippi Supreme Court has long recognized the extension of utilities outside a city's boundaries as indicative of the city's path of growth. *See, e.g., Hattiesburg*, 840 So. 2d at 86 (finding that a city's economic investment into the annexation area is evidence indicating that the area is in the city's path of growth). Here, the City of Horn Lake has invested substantial resources to extend municipal sanitary sewer into the PAA to service its future growth area. Horn Lake presently holds a certificate of public convenience and necessity from the Mississippi Public Service Commission, which grants it the exclusive right to serve its certificated area within the PAA with sanitary sewer. H.L. 72. At present, Horn Lake serves over 46% of the existing dwelling units in the PAA with sanitary sewer. T. 897; H.L. 75. This substantial financial investment by Horn Lake evidences that this area is in Horn Lake's path of growth.

Considering the factors established by this Court for determining whether a proposed annexation area is within a municipality's path of growth, together with the evidence and testimony adduced at trial, the Proposed Annexation Area is clearly within the City of Horn Lake's path of growth. Accordingly, as found by the Chancellor, this factor weighs in favor of annexation by the City of Horn Lake.

³ At the time of filing of this Brief, the new Station 3 is under construction in the PAA.

3. There are Potential Health Hazards in the Proposed Annexation Area.

This Court, in prior decisions, has set forth a number of sub-factors which a court should consider in determining whether there are potential health hazards in the proposed annexation area which would bear on the reasonableness of an annexation, to wit:

(1) potential health hazards from sewage and waste disposal; (2) a large number of septic tanks in the area; (3) soil conditions which are not conducive to onsite septic systems; (4) open dumping of garbage; and (5) standing water and sewage.

Southaven II, 5 So. 3d at 378-79 (citing *Winona*, 879 So. 2d at 979).

The Chancellor's finding on this issue, again failing to cite to a single exhibit admitted into evidence, was that this indicium weighed against annexation. C.P. 602-03. As discussed below, however, the Chancellor's finding is manifestly wrong and ignores substantial, undisputed credible evidence regarding the presence of potential health hazards in the PAA.

A significant portion of the PAA does not have potential or existing health hazards because the City of Horn Lake already serves it with central sanitary sewer. T. 899-900. In fact, 46% of the residents of the PAA are already connected to the City of Horn Lake's sanitary sewer system. H.L. 75. **This portion of the PAA (as depicted on Exhibit H.L. 72) should undisputedly be approved for annexation by the City of Horn Lake, as the Mississippi Supreme Court has repeatedly held that the extension of utilities clearly establishes a municipality's path of growth. See, e.g., *Hattiesburg*, 840 So. 2d at 86.**

With respect to that portion of the PAA that is not presently served with City of Horn Lake centralized sanitary sewer, it was undisputed at trial that soil conditions throughout the PAA as a whole are not conducive to the use of septic tanks as a method of sewage disposal. T. 899-900; H.L. 76. Moreover, expert witness Mike Slaughter testified that he and a representative of the Mississippi State Department of Health identified numerous conditions which evidence existing and potential health hazards throughout the areas of the PAA not presently served

sanitary sewer by Horn Lake. T. 904-905; H.L. 45, 46, 108. Specifically, Mr. Slaughter and the representative of the Mississippi State Health Department identified health hazards throughout the area due to failing septic tanks, including the direct discharge of sewage into streams, as well as open dumping of garbage, and standing water and sewage. *Id.*

The City of Horn Lake presented a plan and financial commitment to address the existing and potential health hazards in the PAA. H.L. 73, 74. City Engineer Vince Malavasi testified that the City identified specific areas in the PAA which are not presently served by Horn Lake's central sewer system and developed a plan for the delivery of sanitary sewer service to those areas. T. 697-98; H.L. 73, 74. Further, the plan represents the City's commitment to invest \$1,205,200 on sewer system improvements in the PAA. H.L. 74.

In *Hattiesburg*, this Court found that evidence supported this indicium where there were failing septic systems in the Proposed Annexation Area and no formal plans by the County to install a sewage system. *Hattiesburg*, 840 So. 2d at 87-88. In the instant case, Mike Slaughter and a representative of the Mississippi State Department of Health identified failing septic tanks throughout the areas of the PAA not served with sanitary sewer by the City of Horn Lake. H.L. 45, 46. Moreover, no evidence was admitted at trial reflecting any plans by DeSoto County to provide centralized sewer service to the residents and property owners of the PAA in an effort to remedy these existing health hazards. The City of Horn Lake, however, has committed to spend in excess of \$1,200,000 on sewer improvements in the first five (5) years following annexation in order to extend sanitary sewer service to unserved residents in the PAA. H.L. 74.

Taking into consideration the substantial and credible evidence introduced at the trial of this matter, in light of the factors set forth by this Court in *Winona*, as well as previous decisions of this Court regarding this *indicia*, the Chancellor's finding that this *indicia* does not favor annexation constitutes manifest error, and is unsupported by substantial and credible evidence.

The evidence before the court below conclusively 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, and that the City of Horn Lake has developed a sewer plan and made a financial commitment to address these health hazards. Accordingly, this indicium clearly weighs in favor of the City of Horn Lake's proposed annexation.

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

The Chancellor found that the City of Horn Lake had failed to meet its "burden of proving the reasonableness of this *indicia*" under the totality of circumstances. C.P. 606-07. This Court has stated that a municipality must prove that it has the "reasonable financial ability" to provide the services and make the improvements set out in the annexation ordinance. *City of Winona*, 879 So. 2d at 981-82. In determining whether there is reasonable financial ability to provide promised services and improvements, this Court has set forth a number of factors to be considered, namely:

(1) the present financial condition of the municipality; (2) sales tax revenue history; (3) recent equipment purchases; (4) financial plan and department reports proposed for implementing and fiscally carrying out the annexation; (5) fund balances; (6) the City's bonding capacity; and (7) expected amount of revenue to be received from taxes in the annexed area.

Southaven II, 5 So. 3d at 379 (citing *Winona*, 879 So. 2d at 981-82).

The evidence presented at trial by the City of Horn Lake on each of the foregoing factors overwhelmingly established that the City has more than reasonable financial ability to deliver the services and improvements it has committed to provide the residents and property owners of the PAA. Accordingly, as discussed below, the finding of the Chancellor that Horn Lake had failed to "meet its burden," is manifest error and not supported by substantial and credible evidence.

The City's Financial Plan for Implementing and Fiscally Carrying out the Annexation and Expected Amount of Revenue to be Received from Taxes in the Annexed Area.

The City, as a part of its annexation feasibility analysis, prepared a "Services and Facilities Plan," which sets forth the departmental commitments of the City to the citizens of the PAA, as well as a detailed analysis of the overall financial impact the proposed annexation would have on the City. H.L. 119. The City's financial projections are extremely conservative, erring on the side of overestimating expenditures and underestimating revenues. T. 1378. According to the City's financial plan, it is projected that revenues from the PAA over the first five years following annexation would exceed expenditures in the area over that same period by \$2,006,903. H.L. 119, Table 7. Specifically, Table 7 of the City's plan projects that Horn Lake's operating costs for the PAA will total \$4,410,784 over the first five years, with total estimated revenues from the PAA for the same period being \$6,417,686. H.L. 119, Table 7. As the plan demonstrates, Horn Lake's proposed annexation is a self-sustaining annexation. The simple fact that this annexation more than pays for itself demonstrates that Horn Lake has the financial ability to deliver promised services and improvements to the residents and property owners of the PAA.

The City's Present Financial Condition, Sales Tax Revenue History, Fund Balances, and Bonding Capacity.

While the fact that the City's proposed annexation is self-sustaining demonstrates that Horn Lake has the financial ability to provide promised services and improvement to the PAA, the City likewise presented compelling evidence regarding its financial ability to implement the annexation based upon its present financial condition. The evidence presented to the court below, including evidence regarding the City's sales tax revenue history, fund balances, and bonding capacity, established that the City of Horn Lake is in sound financial condition and has more than reasonable financial ability to follow through on its promises.

The City of Horn Lake's assessed value has experienced significant growth, increasing from \$121,559,720 for the 2004 Tax Roll to \$149,821,355 for the 2008 Tax Roll. T. 930; H.L. 119, Table 1. Further, general fund revenues and expenditures for the existing City of Horn Lake for fiscal year 2002 through 2007 have remained consistently strong, with revenues from ad valorem collections growing from \$1,115,679 in FY 2003 to \$3,370,246 in FY 2007. H.L. 61. The City's FY 2007 fund balances were \$5,720,724 in governmental funds and \$3,212,468 in proprietary funds (sanitation and utility enterprise funds), which reflect that very sound fund balances are being maintained by the City. H.L. 47; T. 973-74.

The City of Horn Lake's sales tax revenues have grown from \$3,690,739 in Fiscal Year 2003 to \$4,169,831 in Fiscal Year 2007. H.L. 119. Projections reflect that the sales tax revenues to the City following annexation will grow to \$4,780,434 by Fiscal Year 2014. H.L. 119. This projection is extraordinarily conservative in that it assumes that no additional sales tax revenue will be received by the City as a result of annexation. H.L. 119, Table 4; T. 965.

Regarding the City of Horn Lake's bonding capacity, Table 3 of H.L. 119 indicates that under the 15% Rule,⁴ the existing City of Horn Lake's available capacity for debt is \$15,626,917 and under the 20% Rule,⁵ the City's remaining capacity is \$23,477,566. The Chancellor's opinion cites to an alleged miscalculation made by the City of Horn Lake in preparing its debt capacity calculations. Specifically, the contention of the objectors at trial was that a recently issued \$4.4 Million Mississippi Development Bank loan taken out by the City of Horn Lake should have been included in the City's remaining debt calculations. Regarding this issue, Mike Slaughter testified that assuming, *arguendo*, the \$4.4 Million loan should have been included the City's debt capacity calculations, there still would remain approximately \$11,200,000 and \$19,000,000 in bonding capacity for the City under the 15% and 20% Rules, respectively. H.L.

⁴ Miss. Code Ann. § 21-33-303.

⁵ *Id.*

119; T. 1192-1194. Slaughter testified that this level of available debt capacity was more than ample to pay for capital improvements in the proposed annexation area. T. 1193-94.

Standard & Poors' November 1, 2008 credit profile for the City of Horn Lake reflects that Standard & Poors raised its rating on the on the city's "existing general obligation debt to 'A+' from 'A' due to the city's continued steady economic expansion and very strong reserves." H.L. 12. Further, according to Standard & Poors credit profile for the City, "Horn Lake's financial position has historically been very strong" and that the outlook for the City is stable, based on "the city's stable economic and property tax bases, which should continue to support Horn Lake's primary operational revenue streams and sustain its very strong financial position." H.L. 12.

Expert witness Michael Slaughter opined that Horn Lake has the financial ability to provide the services and improvements it has promised to the residents and property owners of the proposed annexation area. T. 975-76. Moreover, the testimony of Christopher Watson, the Town of Walls' municipal finance expert, was that "the City of Horn Lake in all likelihood does have the financial ability" to provide the promised services and improvements to Horn Lake's proposed annexation area. T. 1370. **Mike Slaughter and Chris Watson were the only two witnesses accepted by the court below as experts in municipal finance and both testified that Horn Lake had the financial ability to follow through with its promises associated with the proposed annexation. For the Chancellor to find otherwise was manifest error.**

The Chancellor's Concerns regarding Horn Lake's Financial Ability are Unfounded.

The Chancellor, in his opinion under this indicium, cites to five areas of concern with respect to the City's financial ability: 1) "numerous miscalculations" . . . with regard to assessed valuation; 2) miscalculations in remaining debt capacity; 3) present economic trends; 4) evidence regarding City administrative budgetary decisions; and 5) two City of Horn Lake grant

applications. C.P. 603-07. The Chancellor's concerns however, are unfounded. The evidence overwhelmingly indicated that Horn Lake has the financial ability to undertake the proposed annexation. Moreover, witness testimony at trial established that the areas in which the Chancellor expressed "concern" had very little bearing on the City's overall present financial condition and ability to undertake and pay for the annexation.

The first area of the Chancellor's concern, that being the "numerous miscalculations" regarding assessed valuation of the City, PAA, and resultant combined City, was a result of two alleged miscalculations: first, the inadvertent inclusion of a separate proposed annexation area into the assessed value of the presently configured City of Horn Lake⁶ and; second, the contention of the objectors at trial that there was a \$400,000 overstatement of the assessed value of the City's PAA in this matter. However, assuming *arguendo* that both of these contentions by the Objectors were meritorious, neither has any impact whatsoever on the City of Horn Lake's financial ability to pay for this annexation.

With regard to the allegation that the City of Horn Lake overstated the assessed value of the PAA by \$400,000, Mike Slaughter testified that, even assuming for purposes of argument that this were true, it would not affect the City's financial ability to provide promised services and improvements to the PAA. T. 1375-1376. Specifically, Slaughter testified that reducing the assessed value of the PAA by \$400,000 would have a net financial impact on the ad valorem tax collections that the City projects collecting from the PAA of \$127,426 total over the first five (5) years. *Id.* **Accordingly, assuming the City collected \$127,426 less ad valorem taxes in the PAA than projected by Mike Slaughter, anticipated revenues from the PAA still exceed anticipated expenditures in the PAA for the first five (5) years by over \$1,800,000.** T. 1375-1377. Accordingly, the City's proposed annexation would remain very self-sustaining.

⁶ At the time of trial the City had a separate annexation pending, the "Star Landing Road Annexation." The Star Landing Road PAA was inadvertently included in the assessed valuation of the existing City.

The Chancellor's Opinion in this matter placed significant weight on the state of this nation's overall economy, specifically the "Great Recession of 2008." However, this important consideration was thoroughly addressed by the City of Horn Lake's trial witnesses. T. 1195-1198. Mike Slaughter testified that while some sources of municipal revenues such as permit fees are economically driven, others are not. Further, Slaughter testified that his projections were conservative in nature and accounted for national and local economic trends. For example, Slaughter based growth projections for the City with regard to franchise fees upon an inflationary rate, not a dwelling unit increase. T. 1196. Mike Slaughter further testified that privilege licenses were generally not economically driven. T. 1196-97.

The Chancellor's opinion fails to note assumptions made by Mike Slaughter in creating the financial projections which take into account the present economic atmosphere. For example, in projecting the assessed value of the existing City from 2004 to 2008, the average annual rate of change was 5.4%. T. 1377. In an effort to be conservative, the City's financial projections utilize a 4.8% rate of change in assessed value, an 11.11% decrease in growth rate from that actually experienced by the City for the past four years. T. 1378. Further, in calculating revenue to be received from the PAA resulting from personal property taxes, Slaughter assumed no personal property taxes would be received from the PAA in order to present extremely conservative financial projections to the Court. T. 1378. Slaughter likewise divided the amount of auto and mobile home taxes anticipated to be received from the PAA in half for purposes of being extremely conservative in his financial projections and opinions. T. 956.

Regarding the July, 2006, memo from the Mayor (H.L. 112), the December 2006 Grant Application (H.L. 113), and the December 2007 Grant Application (H.L. 114), the actual financial condition of the City of Horn Lake does not support the statements made in these

exhibits. 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 economic distress. H.L. 6, 7, 8, 9, 10. The City's balanced FY 2009 budget likewise does not show a city in distress. H.L. 14. Rather, the City's audited financial statements show that Horn Lake is in sound fiscal condition and is being managed in a fiscally conservative manner.

For purposes of this Court's review, it can not be emphasized enough that the only two witnesses testifying with regards to the City of Horn Lake's financial ability to undertake the proposed annexation were Mike Slaughter on behalf of the City of Horn Lake, and Chris Watson on behalf of the Town of Walls. Both were accepted by the Court as experts in the field of municipal finance and both, having sat through the entire trial of the matter, were ultimately of the opinion that the City of Horn Lake has the financial ability to undertake the proposed annexation. T.975-76, 1370. The Chancellor's finding that Horn Lake did not have the financial ability to pay for the annexation was manifestly wrong and not supported by substantial and credible evidence.

Considering the factors that this Court set forth in *Winona*, together with the evidence before the court below, the City of Horn Lake far exceeded its burden under this indicium. Horn Lake established that it is a financially sound municipality that is ready, willing, and able to provide the services and improvements that it has promised the residents and property owners of the PAA and that it has the financial ability to do so. The Chancellor's Opinion finding otherwise was in manifest error.

5. There Is a Need for Zoning and Planning in the Proposed Annexation Area.

The evidence before the court below established that DeSoto County, unlike a number of other counties throughout the State, provides very good planning and zoning at the county-level. T. 977. However, the evidence likewise established that the City of Horn Lake provides

excellent municipal-level planning, zoning, and code enforcement to its present citizens. H.L. 24, 81, 102, 105; T. 790-91, 977-79. Both Michael Slaughter and Horn Lake Planning Director Anita Rainey testified that, although the PAA is presently covered by DeSoto County's planning and zoning, it could nonetheless benefit from the municipal-level planning and zoning provided by the City of Horn Lake. T. 795, 977-78. Specifically, Mr. Slaughter testified that the PAA would benefit from the City's ability to concentrate its planning, zoning, and code enforcement efforts on a geographically smaller area than the County is able to do. T. 977-78.

The Chancellor erred on this indicium in finding that it "weighs against annexation." C.P. 607. The City of Horn Lake does not dispute that the record below established that DeSoto County does a good job in the provision of county-level planning and zoning to the residents of the unincorporated area. However, evidence before the court below established that the City of Horn Lake has an excellent planning and zoning department. As this Court has held in previous annexation cases involving municipalities in DeSoto County, while this indicium may not "favor" annexation, neither does it "weigh against" annexation. *See, e.g., Southaven II*, 5 So. 3d at 380. Rather, this *indicium*, as applied to the record before this Court is annexation neutral and, as this Court stated in *Southaven II*, this factor alone does not determine whether or not the annexation is reasonable. *Southaven II*, 5 So. 3d 380.

6. There is a Need for Municipal Services in the Proposed Annexation Area and Horn Lake Has the Ability to Provide the Needed Services.

This Court has previously held that factors to be considered when analyzing a need for municipal services in the proposed annexation area include: (1) requests for water and sewage services; (2) plan of the City to provide first response fire protection; (3) adequacy of existing fire protection; (4) plan of the City to provide police protection; (5) plan of the City to provide increased solid waste collection; (6) use of septic tanks in the proposed annexation area; and (7) population density. *Southaven II*, 5 So. 3d at 381 (*citing Winona*, 879 So. 2d at 984).

With regard to this indicium, the Chancellor found that “generally the area is not in need of municipal level services which can be provided by Horn Lake.” C.P. 610. However, considering the evidence before the Chancellor, in light of the relevant factors previously set forth by this Court in *Winona*, it is clear that the Chancellor was in error in holding this factor to weigh against annexation.

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

The Chancellor’s opinion notes that there were no requests for water and sewage services before the court, as those services are largely already provided to the PAA by the Walls Sewer District, the Walls Water Association, Inc., and the City of Horn Lake. C.P. 608.

The City of Horn Lake holds a certificate of public convenience and necessity for the provision of sanitary sewer to a large portion of the PAA. H.L. 72. In fact, Horn Lake presently serves approximately 779 dwelling units in the Proposed Annexation Area (or 46% of the PAA) with sanitary sewer. H.L. 75. Certainly the fact that there are less requests for sewage services as a result of the City of Horn Lake already serving 46% of the Proposed Annexation Area with municipal sewer services cannot weigh against the reasonableness of the City’s proposed annexation. H.L. 75. Moreover, as City Engineer Vince Malavasi testified, Horn Lake’s entire PAA is certificated to the Walls Water Association for the provision of retail water service. T. 691-92; H.L. 98. Accordingly, requests for water services are not an applicable consideration in this case.

Although it is already serving 46% of the PAA with sewer, there remain homes in the PAA with no access to central sewage, having to instead use on-site sewage treatment and disposal, such as a septic tank. T. 698-99; H.L. 73, 75. It is undisputed that the soil types in DeSoto County as a whole, including the PAA, are not conducive to this type of sewage disposal. H.L. 76; T. 900. Further, Mike Slaughter testified that he had surveyed the PAA with a

representative of the Mississippi State Department of Health and likewise identified not only septic tank use in the area, but the presence of failing septic tanks in Horn Lake's PAA (in that portion of the PAA which is not presently served by City of Horn Lake sanitary sewer). T. 903-08; H.L. 45, 46.

City Engineer Malavasi testified that, in developing Horn Lake's proposed sewer improvements plan, he utilized aerial photography and identified homes within the City of Horn Lake's PAA which were without sanitary sewer and were instead relying on septic tanks. T. 698-99; H.L. 73. Based upon the areas identified by Malavasi, a plan was developed and presented to the court below in which Horn Lake proposed approximately \$1,200,000 in sewer improvements in the PAA (above and beyond the sewer infrastructure already installed by the City of Horn Lake) within the first five (5) years following annexation. T. 981; H.L. 73. Following construction of the improvements in the City's sewer plan, no dwelling units within the portion of the PAA presently certificated to Horn Lake for sanitary sewer would remain without available sewer. T. 705-06.

Plan of the City to Provide Police Protection to the PAA.

Through extensive witness testimony and introduction of evidentiary exhibits, the City of Horn Lake demonstrated that it has the ability and commitment to provide an excellent level of law enforcement to the PAA. The City's Services and Facilities Plan evidences the City's commitment to provide the residents and citizens of the PAA the high level of municipal law enforcement enjoyed by the present citizens of Horn Lake. H.L. 119.

Horn Lake Police Chief Darryl Whaley testified that, at the time of trial, the City had 61 sworn officers, including 41 patrol officers. T. 566-67; H.L. 119. Chief Whaley further testified that the presently configured City is divided into six police wards, defining the area each officer is to patrol. This system provides for an expedient response by Horn Lake law enforcement.

H.L. 64; T. 567-68. Further, Chief Whaley testified that the City of Horn Lake provides the full array of municipal-level law enforcement services, including radar enforcement, investigations, and a D.U.I. unit. H.L. 63; T. 583.

The City of Horn Lake's Services and Facilities Plan, H.L. 119, details the City's commitment for delivery of municipal-level law enforcement to the PAA. Specifically, Horn Lake's plan proposes to add and fully equip eight (8) new patrol officers, at a cost of over \$441,000 per year, in order to ensure that the residents and property owners of the PAA receive the high level of law enforcement the City of Horn Lake provides to its existing citizens. Chief Whaley testified that the PAA is proposed to be divided into two wards, with officers patrolling each 24 hours a day, seven days a week. T. 574-75. According to Chief Whaley, dividing the area into two wards will provide for more frequent patrols, faster response times, and the ability to become proactive in the prevention of crime in the area. T. 574-75.

A traffic survey conducted by the City of Horn Lake police department at several locations throughout the PAA demonstrates that the area sought to be annexed by the City of Horn Lake is in dire need of radar enforcement of posted speed limits. H.L. 52, 53. With speeds nearing 100 miles per hour observed in areas with posted speed limits of 55 and 65 miles per hours, it is very apparent that there is a real need for municipal-level law enforcement in the PAA. H.L. 52. The evidence at trial established the City of Horn Lake's plan and commitment to provide much-needed municipal level law enforcement in the PAA.

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

The PAA is presently served by the Walls Fire Protection District, a fire protection district created by the DeSoto County Board of Supervisors pursuant to *Miss. Code Ann.* §§ 19-5-151, *et seq.* The Walls Fire Protection District operates on primarily a volunteer basis. As Mr. Slaughter testified, while volunteer fire departments provide a valuable service to the community

they serve, they simply cannot function at the level a full-time municipal-level fire department operates.

Chief David Linville, the City of Horn Lake's Fire Chief, testified regarding the City of Horn Lake's provision of full-time municipal level fire protection to its present citizens, and the plan of the City to deliver that same high level of fire protection to the residents and property owners of the PAA. Chief Linville testified that the City of Horn Lake presently provides its citizens with fire protection 24 hours a day, 7 days a week, with full-time paid firemen. T. 626-27; H.L. 39. Presently, the City operates three fire stations within its existing boundaries, with Station Three located on the boundary of the Proposed Annexation Area. T. 629; H.L. 40. While the City of Horn Lake could easily provide the PAA with fire protection from the present location of Station Three, the City has a proposal and funding in place to relocate Station Three approximately one (1) mile south of its present location to better serve the PAA. T. 629-31; H.L. 40.

Larry Carr, Superintendent of the Public Protection Department for the Mississippi State Rating Bureau, testified that Horn Lake's relocation of Station Three would make the Station more centrally located. T. 142; H.L. 40. Further, Mr. Carr testified that the City of Horn Lake is presently staffed and equipped to such a level that the City would need to add no new equipment or personnel in order to deliver its present Class 6 level fire protection to the residents and property owners of the PAA. T. 143-44; H.L. 11, 40.

The record established that the PAA has experienced 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. Michael Slaughter testified that the growth experienced by the PAA evidenced a need for municipal-level fire protection in the area. T. 983. According to the testimony of both Slaughter and Chief Linville, further evidencing the

need for municipal-level fire protection in the area is the fact that the City of Horn Lake is presently being called under mutual aid requests to respond to fires in the PAA. H.L. 37, 38; T. 632-34, 982. Clearly, substantial and credible evidence at trial established that the PAA is in need of municipal-level fire protection and fire suppression and the City of Horn Lake has a plan and financial commitment to furnish those services.

Population Density.

The evidence established that the population density of the PAA increased from 341 persons per square mile in 2000 to 469 persons per square mile in 2008. H.L. 26. The actual population of the PAA grew from 3,099 persons in 2000, to an estimated 4,267 persons in 2008, a 37% increase. H.L. 26; T. 983-84. The PAA has likewise seen a 37% increase in dwelling units in the PAA, from 1,229 in the year 2000, to 1,692 in 2008. HL. 26; T. 984. Naturally, urbanization of the PAA beyond its prior levels brings with it more dwelling units, more citizens, and more traffic, all of which create a greater need for municipal-level services. T. 984.

In *Southaven I*, this Court reviewed a chancellor's finding that an undeveloped 310 acre parcel had a need for municipal services because it was going to ultimately be developed into a commercial or residential development by its owners. *Southaven I*, 864 So. 2d at 923-24. In affirming the chancellor's finding, this Court cited with approval the chancellor's opinion that the PAA would need municipal services which Southaven offered such as fire and police protection, water and sewage services, brush and garbage removal and code enforcement, as well as the plan of Southaven to build a fire station less than half a mile from the PAA. *Id.*

In *Southaven I*, there was no development in the PAA. Here, on the other hand, there are already over 4,200 persons living in the PAA. H.L. 26. Moreover, as stated above, the City of Horn Lake offers every municipal service cited in *Southaven I* to its present citizens at a level exceeding that level in which such services are offered by DeSoto County.

Based upon the factors established by the Mississippi Supreme Court in *Winona*, the evidence in the instant case overwhelmingly indicates that there is a need for municipal services within the PAA, and that the City of Horn Lake is ready, willing, and able to provide such services to the residents. Accordingly, for the Chancellor to find that this *indicia* weighs against annexation is clearly erroneous and is not supported by substantial and credible evidence.

7. There Are No Natural Barriers Between the City of Horn Lake and the Proposed Annexation Area.

With reference to the “natural barriers” indicium, this Court has previously defined a “natural barrier” as a condition that makes provision of municipal services impossible or prohibitively expensive. *See City of Columbus*, 644 So. 2d at 1175 (“Reference to this Court’s earlier experiences with natural barriers shows that it is not a constraint upon development that establishes unreasonableness under the natural barrier concept but rather a condition that makes provision of municipal services impossible or prohibitively expensive”).

Horn Lake’s annexation area is contiguous to the existing City, with unimpeded access into and out of the area from the City. In-use streets of the City of Horn Lake already extend into the PAA. The parties stipulated, and the Chancellor found with respect to this indicium, that there was no evidence to indicate that there were any natural barriers between the municipality and the proposed annexation area which would prohibit the City of Horn Lake from providing the full range of municipal services and facilities to all areas sought to be annexed. C.P. 610; T. 989-90. Accordingly, this indicium weighs in favor of annexation.

8. The Past Performance and Time Element Involved in Horn Lake’s Delivery of Services to Its Present Residents Suggest that the Annexation Proposed by the City of Horn Lake Is Reasonable.

On this indicium, the Chancellor noted that since its last annexation, the City of Horn Lake has spent in excess of \$12,000,000 on capital improvement projects for water and sewer, \$4,000,000 on street improvements, \$7,000,000 on Latimer Park, and has adequately staffed its

fire and police departments serving the City. Nonetheless, the Chancellor ultimately states that “the Court cannot say with any degree of certainty that Horn Lake’s past record of performance in providing services for its citizens encourages or favors annexation.” C.P. 610-12.

The evidence before the court below established that the City has done an excellent job in delivering promised services to all of its existing citizens, including residents previously annexed into the City. Specifically, the evidence before the Court established that since 2002, the year of the City’s last annexation, Horn Lake has spent in excess of \$23,500,000 on capital projects throughout the city, including a \$7,000,000 park in the newly annexed territory. H.L. 21; T. 764-65, 990-92. Further, the City has done an excellent job in its continued provision of Class 6 fire protection, a high level of municipal police protection, and planning and zoning services to the citizens of the existing City. H.L. 24, 40; T. 992-93, 995-96. For example, the commitment of the City of Horn Lake in its previous annexation in 2002 was to establish a third fire station, a commitment which Chief Linville testified had been met. T. 681-82; W. 34.

The Chancellor’s opinion notes that there are 256 homes within the existing City which remain without central sewer service. What the Chancellor’s decision does not consider is that these 256 homes account for a mere of 2.9% of the existing City. H.L. 75. There are some homes in the existing city to which the extension of sanitary sewer is not necessary or economically feasible due to their remote location. Moreover, City Public Works Director Spencer Shields testified that, of the 256 homes which are not presently connected to Horn Lake’s central sewer system, some of those residents have access to the City’s sanitary sewer but voluntarily choose not to connect to the City’s system. T. 771. The Chancellor’s finding that the City’s provision of sanitary sewer to over 97.1% of its existing residences is indicative of poor past performance is simply not supported by the substantial and credible evidence on this issue at trial.

The Chancellor also apparently failed to consider the City of Horn Lake's past performance in the provision of municipal-level water service to its existing citizens. The evidence before the court below established that the City of Horn Lake has extended water service to 99.8% of the existing residential dwelling units in the City, and 100% of the existing commercial units in the City. T. 996-97; H.L. 100, 101. Similar to the City's past performance in provision of sewer to 97.1% of the existing City, it can not be argued that provision of water to 99.8% of the residential units in the existing City is anything but excellent past performance.

This Court has previously upheld an annexation even though the Court found that the City had failed to provide municipal services for some areas of the City for more than eighteen years. *Hattiesburg*, 840 So. 2d at 90. Similarly, this Court has upheld an annexation and found the "past performance" indicium to weigh in favor of the reasonableness of an annexation, even where the city's prior annexation promises did not provide for full services to all areas of annexed territory. *Winona*, 879 So. 2d at 987. The evidence before the court below, however, established a much different situation than those present in either *Hattiesburg* or *Winona*.

The undisputed testimony and evidence in the trial of this matter conclusively established that the City of Horn Lake has: 1) spent in excess of \$23,500,000 on capital improvements since its past annexation in 2002 (T. 761; H.L. 21); 2) extended central sewer to 97.1% of the existing city (and 46% of the proposed annexation area)(H.L. 75); 3) extended municipal water to 99.8% of the existing residences in the City (T. 740-41; H.L. 100); 4) constructed a \$7,000,000 park in its 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 overwhelming weight of the

evidence established that the City of Horn Lake has an excellent overall record of past performance in the provision of promised services and improvements to its existing citizens, including residents and property owners previously annexed. For the Chancellor to find otherwise was manifest error.

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

This Court has previously found that “the mere fact that residents in the PAA will have to pay more taxes is insufficient to defeat annexation.” *Winona*, 879 So. 2d at 988. In determining whether a proposed annexation is reasonable, emphasis should be placed on whether residents in the annexed area will receive something of value in exchange for their tax dollars. *Hattiesburg*, 840 So. 2d at 83. Under this indicium, the reviewing court “is required to balance the equities by comparing the City’s need to expand and any benefits accruing to residents from the annexation with any adverse impact, economic or otherwise, which probably will be experienced by those who live in and own property in the annexation area.” *City of Columbus*, 644 So. 2d at 1172.

With respect to this indicium, the Chancellor was “unconvinced that the annexation would be reasonable.” C.P. 613. Like his opinion on several preceding *indicia*, the Chancellor again cited to no evidence in support of his finding.

The substantial and credible evidence established that the residents and property owners in the Proposed Annexation Area will receive much improved, valuable municipal services in return for their tax dollars upon annexation. Specifically, the record shows that, as a result of annexation, the residents and property owners of the PAA will receive benefits including: 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). Overall, the City of Horn Lake proposes to spend in excess of \$4,400,000 within the first 5 years following annexation on personnel and equipment necessary to provide the citizens of the PAA with the same high level of services currently being provided to the existing citizens of Horn Lake. HL 119.

The Chancellor's opinion on this indicium takes issue with the fact that Horn Lake's plan regarding sewer in the PAA will serve only a "small minority of the homes in the area." C.P. 612-13. However, any such criticism is grossly misplaced. First, as stated *supra*, the City of Horn Lake already provides sanitary sewer to 779 homes in the PAA, so to state that Horn Lake will only serve "a small minority of homes" in the PAA is erroneous. H.L. 75. Second, and most importantly, the Chancellor fails to note that sewer services are funded through user fees, not taxes, meaning that 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 services 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 the annexation. HL 119. The Court's finding on this issue was in error.

The Chancellor also states that “planning and zoning will remain largely unaffected as well.” C.P. 613. Although DeSoto County provides a good level of planning and zoning, residents of the PAA will receive additional planning and zoning as a result of annexation by Horn Lake. For example, the residents of the PAA will benefit from the application of the City’s comprehensive plan, and they will participate in the comprehensive planning element as far as future land use, future transportation, community facilities, and goals and objectives for land use and development in the area. T. 1002. The residents of the PAA would likewise receive the benefit of municipal level planning and zoning, as well as building codes and enforcement. T. 1002.

The evidence demonstrates that upon annexation, residents of the proposed annexation area will enjoy numerous benefits and services in exchange for their tax dollars. *See Hattiesburg*, 840 So. 2d at 82 (holding “municipalities must demonstrate through plans and otherwise, that residents of annexed areas will receive something of value in return for their tax dollars in order to carry the burden of showing reasonableness.”). The Chancellor’s finding that this indicium weighs against annexation is manifestly wrong and is not supported by substantial and credible evidence. The evidence established that the residents and property owners of the PAA will positively benefit from being annexed into the City of Horn Lake and, accordingly, this indicium favors annexation by Horn Lake.

10. The Annexation Proposed by the City of Horn Lake Will Not Have an Adverse Impact on the Voting Strength of Any Protected Minority Groups.

The City of Horn Lake’s annexation will not have any significant impact upon the voting strength of any minority group. The evidence introduced at trial indicates that the impact of the City’s annexation upon the voting strength of protected minority groups is *de minimis*. H.L. 26, 69, 70; T. 1004-1006. Specifically, the evidence established that the demographics of the existing City of Horn Lake are as follows: 83% white, 12.3% black, and 4.7% other. H.L. 69.

Following annexation the demographic makeup of the City would be 83.6% white, 11.7% Black, and 4.7% other. H.L. 69.

This Court has held that “this indicium should not generally be afforded great weight where it is not raised by a party with standing.” *City of Columbus*, 644 So. 2d at 1180. The Objectors in this case have not offered any minority objector witnesses asserting any impact or dilution upon minority voting strength. Accordingly, this indicium of reasonableness weighs in favor of annexation by the City of Horn Lake.

11. Property Owners and Other Inhabitants of the Proposed Annexation Area Have in 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 Taxes.

The testimony of Mike Slaughter on this indicium was that the residents and property owners of the PAA derive a benefit from their proximity to the City and from the City’s services without paying the additional taxes that support those services. T. 1007. For example, both Mike Slaughter and Chief David Linville testified that the City of Horn Lake regularly provides fire protection to the PAA by way of mutual aid calls. T. 1007-8; H.L. 38, 39. The Chancellor failed to give consideration to the City of Horn Lake’s provision of this critical public safety service to the residents and property owners of the PAA. Moreover, the evidence established that 33.2% of the participants of the City’s football program were from outside the City limits, 44.4% of the baseball participants were from outside the City limits, and 13.1% of the basketball participants were from outside the City limits. T. 1008-9; H.L. 71.

The Chancellor found that this indicium did not support the City of Horn Lake’s proposed annexation. However, the substantial and credible evidence before the court below established that the citizens of the PAA are deriving benefits due to their proximity without paying their fair share of the taxes that go to support those benefits. Accordingly, this factor clearly weighs in favor of annexation by the City of Horn Lake.

12. Other Factors Support Horn Lake's Proposed Annexation.

State Law Does Not Prohibit Annexation of a Statutorily-Created Fire Protection District.

The Chancellor's opinion finds that "until the conflict between the Walls Fire Protection District and Horn Lake, or any annexing municipality remains, this will reflect negatively on an annexation application in this area." C.P. 616. State law, however, does not prohibit a municipality from annexing into a statutorily created fire protection district.

Mississippi Code Ann. §§ 19-5-151, *et seq.*, authorizes the creation of water, sewer, garbage disposal, and fire protection districts. At the core of this issue is language found in *Mississippi Code Ann.* § 19-5-175, which provides, in part:

As long as any such district continues to furnish any of the services which it was authorized to furnish in and by the resolution by which it was created, it shall be the sole public corporation empowered to furnish such services within such district.

This language has been the subject of increasing debate, spawning a number of municipalities and fire protection districts to seek opinions from the Attorney General as to the legality of a municipal annexation of territory situated within the defined boundaries of statutorily created fire protection districts, an issue which this Court has not addressed in any opinion of which we are aware.

It is undisputed that *Mississippi 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. The Attorney General of Mississippi has likewise never opined that the laws of this State contain such a prohibition. Rather, the Attorney General has opined that a municipality may annex into a statutorily created fire protection district, and the fire protection district is authorized to cede its jurisdiction as first response fire protection provider to the annexing municipality when the municipality is ready, willing, and able to take over the provision of fire

protection to its newly annexed territory. *See, e.g.* Op. Att’y Gen. Ellis, 1989 WL 503581 (Miss. A.G.). The City of Horn Lake stands ready, willing, and able to take over fire protection in the proposed annexation area.

If annexed into the City limits, the City of Horn Lake has the statutory duty and right to provide fire protection to the newly annexed territory just as it does in all other areas within the City. *See, e.g., Miss. Code Ann.* § 21-25-3 (providing the governing authorities of municipalities the power to provide for the prevention and extinguishment of fires within the municipality). To this end, the City of Horn Lake, in connection with this annexation, committed to a plan for the delivery of full-time, municipal-level fire protection and fire suppression services to the residents and property owners of the PAA. H.L. 119. Further, Horn Lake Fire Chief David Linville testified that once the area is annexed into the City, the Horn Lake Fire Department will respond to all 911 calls from the area. T. 684. Horn Lake will not stop or in any way interfere with any volunteers who respond on behalf of the Walls Fire Protection District. T. 684-688.

Ultimately, the creation and operation of Fire Protection Districts is governed exclusively by statute. Those statutes provide no prohibition against annexation of the district by a municipality. Accordingly, for the Chancellor to find that the presence of the Walls Fire Protection District in the PAA “weighs negatively on an annexation application in this area,” be it Horn Lake or otherwise, is manifest error and finds no basis in the statutes pursuant to which the District was created.

The City’s Provision of Central Sewer to the Proposed Annexation Area.

Following its 2002 annexation, the City of Horn Lake spent \$7,300,000 to acquire North Mississippi Utilities, a certificated utility provider that held the exclusive right to serve sewer and water in a portion of the City’s 2002 annexation area, as well as a portion of the City’s present annexation area. H.L. 21; T. 896, 991. The City presently holds the exclusive right to

serve sanitary sewer to some of the more densely populated areas in the PAA. H.L. 72. In fact, as of the trial of this matter, the City was already serving approximately 46% of the dwelling units in the PAA with sanitary sewer. H.L. 75. Moreover, the plans and commitments made by the City of Horn Lake in connection with this annexation for the delivery of sewer improvements to the PAA will extend the City's centralized sewer service to 100% of its certificated area. T. 705-706.

The City's efforts in the delivery of sanitary sewer service to 779 residences in the PAA have resulted in the decrease in on-site septic system use throughout the area. T. 899-900. Accordingly, potential health hazards in the City's sanitary sewer Certificated area have been minimized. *Id.* Further, the City's delivery of sanitary sewer service to its certificated area has continued to spawn growth within existing developments in the area. T. 850.

This Court, in *Hattiesburg*, recognized the significance of a municipality's economic investment in an annexation area through the extension of utilities outside of its municipal boundaries and into the annexation area. *Hattiesburg*, 840 So. 2d at 86. The trial court failed to give this critical factor consideration in making its determination as to the reasonableness of the City of Horn Lake's proposed annexation.

The City of Horn Lake's financial commitment to the PAA through acquisition of North Mississippi Utilities, and its provision of sanitary sewer to 46% of the dwelling units in the PAA, as well as its commitment to extend additional sanitary sewer improvements to the area in connection with this annexation, are critical factors which the Court below should have considered to weigh in favor of Horn Lake's annexation of, at the least, its presently certificated area. The Chancellor's failure to consider this issue was manifest error.

V. CONCLUSION

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. Alternatively, 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, 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.

The evidence before the court below overwhelmingly established that the annexation proposed by the City of Horn Lake is reasonable in its entirety. Numerous witnesses testified in support of the City of Horn Lake's proposed annexation. The Chancellor's opinion cites to the testimony on none of those witnesses. Nearly 100 exhibits were introduced into evidence at trial in support of the City of Horn Lake's proposed annexation. The Chancellor's opinion cites to none of those exhibits. It cannot be said from a review of Chancellor's opinion that he gave consideration to all the evidence before the court in making his decision. Accordingly, the Chancellor's opinion that the City of Horn Lake's proposed annexation is unreasonable in its entirety is manifestly wrong, is not supported by substantial and credible evidence, and should be reversed by this Court.



RESPECTFULLY SUBMITTED, this the 15th day of March, 2010.


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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 pleading to the following counsel of record:

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Walls, MS 38680

James Hawkins
6840 Bramble
Walls, MS 38680

Billy Boling
6758 Hickory Crest
Walls, MS 38680

Stephen Cameron
6352 Poplar Corner
Walls, MS 38680

Shirley Hall
6088 Honeysuckle Ln.
Walls, MS 38680

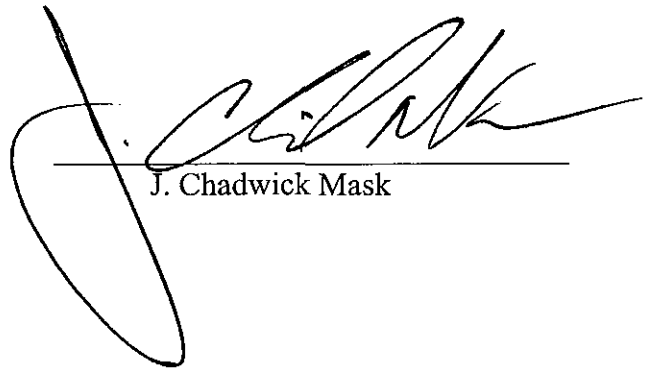
T.A. Campbell
Barbara Campbell
7821 Nail Rd. W.
Walls, MS 38680

Rebecca Cameron
6352 Poplar Corner
Walls, MS 38680

Merria Casey
6136 Honeysuckle Ln.
Walls, MS 38680

Mr. Monty Westmoreland
7285 Poplar Corner Road
Walls, Mississippi 38680

THIS, the 15th day of March, 2010.



J. Chadwick Mask