

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-AN-01744-SCT

***IN THE MATTER OF THE ENLARGING,
EXTENDING, AND DEFINING THE
CORPORATE LIMITS AND BOUNDARIES:
PENDORFF COMMUNITY ASSOCIATION, LLC***

v.

THE CITY OF LAUREL, MISSISSIPPI

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| DATE OF JUDGMENT: | 11/20/2018 |
| TRIAL JUDGE: | HON. JAMES D. BELL |
| TRIAL COURT ATTORNEYS: | J. CHADWICK MASK DEIDRA J. BASSI FREIDA GUNN COLLINS JACOB STUTZMAN CHRISTOPHER M. HOWDESHELL |
| COURT FROM WHICH APPEALED: | JONES COUNTY CHANCERY COURT |
| ATTORNEY FOR APPELLANT: | CHRISTOPHER M. HOWDESHELL |
| ATTORNEYS FOR APPELLEE: | J. CHADWICK MASK JACOB STUTZMAN DEIDRA J. BASSI |
| NATURE OF THE CASE: | CIVIL - MUNICIPAL BOUNDARIES & ANNEXATION |
| DISPOSITION: | AFFIRMED - 09/24/2020 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

BEFORE RANDOLPH, C.J., COLEMAN AND CHAMBERLIN, JJ.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. The City of Laurel is located in southeast Mississippi in Jones County. The mayor and the board of aldermen of Laurel unanimously passed an ordinance to extend Laurel's boundaries, but the Pendorff Community Association contested the annexation. Following

a bench trial, the Chancery Court of Jones County ruled in favor of Laurel and entered an order approving the annexation. Pendorff appealed the chancery court's ruling. After reviewing the record, the Court finds that the chancery court's approval of the annexation is reasonable. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. On March 20, 2018, Laurel's mayor and board of aldermen unanimously passed an amended ordinance proposing to annex four areas in Jones County, Mississippi. Of the four proposed annexation areas (PAAs), only PAA Four (the PAA) is contested. The PAA lies south of Laurel's city limits and north of Ellisville's city limits along the Highway 11 corridor. The City of Ellisville only contested the annexation of a small parcel of land within the PAA. After learning of Laurel's intent to annex the PAA, Pendorff filed an entry of appearance to oppose the annexation. Unlike Ellisville, Pendorff contested the annexation of the entire PAA. The Honorable James D. Bell presided over the matter by special appointment, and the parties proceeded to trial.

¶3. During the trial, Laurel stipulated that it would not annex the small parcel of land within the PAA that Ellisville contested. On October 23, 2018, the chancellor approved Laurel's annexation and explained that "Laurel met its burden to establish reasonableness under the totality of the circumstances by clear and convincing evidence, *which exceeds the required preponderance of the evidence burden.*" (Emphasis added.) Pendorff appealed to our Court. On appeal, Pendorff argues that the chancellor erroneously analyzed two of the twelve indicia of reasonableness and that Laurel's annexation of the PAA is unreasonable.

STANDARD OF REVIEW

¶4. “Our standard of review for annexation is very limited.” *City of Horn Lake v. City of Southaven (In re City of Southaven)*, 864 So. 2d 912, 917 (¶ 9) (Miss. 2003). “We may only reverse the chancery court’s findings as to the reasonableness of annexation if the chancellor’s decision is manifestly wrong and is not supported by substantial and credible evidence.” *Id.* (citing *City of Jackson v. City of Madison (In re City of Madison)*, 650 So. 2d 490, 494 (Miss. 1995)). “Findings of fact made in the context of conflicting, credible evidence may not be disturbed unless th[e] Court can say that from all the evidence that such findings are manifestly wrong, given the weight of the evidence.” *Id.* (internal quotation marks omitted) (quoting *Bassett v. Town of Taylorsville*, 542 So. 2d 918, 921 (Miss. 1989)).

DISCUSSION

¶5. “[A] chancellor’s decision concerning annexation is reviewed by th[e] Court on appeal through the lens of reasonableness.” *Russell v. City of Madison (In re City of Madison)*, 983 So. 2d 1035, 1041 (¶ 8) (Miss. 2008). “In reviewing the chancellor’s decision as to whether a proposed annexation is reasonable, th[e] Court takes into account twelve indicia of reasonableness” *Id.* at 1042 (¶ 9) (citing *Lee v. City of Biloxi (In re City of Biloxi)*, 744 So. 2d 270, 278 (¶ 25) (Miss. 1999)). The indicia are

- (1) the municipality’s need to expand;
- (2) whether the area sought to be annexed may be deemed to be reasonably within a path of growth of the city;
- (3) the potential health hazards from sewage and waste disposal in the proposed annexation area;
- (4) the municipality’s financial ability to make improvements and furnish the promised municipal services;
- (5) the need for zoning and overall planning in the proposed area of annexation;
- (6) the need for municipal services in the area proposed to be annexed;
- (7) the existence *vel non* of natural barriers between the city and the proposed annexation area;
- (8)

the past performance and time element concerning the city’s providing of services to its current residents; (9) the economic impact or any other type impact of the annexation upon those persons who live or own property in the area proposed for annexation; (10) the impact of the annexation upon the voting strength of protected minorities; (11) whether property owners and all inhabitants of the area proposed for annexation have in the past, and will in the future, unless annexed, enjoy the economic and social benefits of the municipality because of their reasonable proximity to the corporate limits of the municipality, without paying their fair share of taxes; and (12) any other factors that may or may not affect the issue of the reasonableness of the proposed annexed area.

Id. (citing *In re City of Biloxi*, 744 So. 2d at 278 (¶¶ 25–26)).

¶6. Of the twelve indicia, Pendorff contests two. Pendorff argues that the chancery court erred when it ruled that Laurel had a need to expand and that Laurel had the financial ability to make improvements and furnish the promised municipal services. Pendorff concedes that the other ten indicia are reasonable and favor annexation. Despite its concession, Pendorff argues that based on the totality of the circumstances, “a few indicia might carry greater weight under the circumstances than the other indicia” The Court agrees. Yet, as discussed below, we affirm the chancellor’s ruling.

I. City of Laurel’s Need to Expand

¶7. “In determining the reasonableness of a municipality’s need to expand, th[e] Court has considered many subfactors” *Holmes v. Town of Leakesville (In re Town of Leakesville)*, 283 So. 3d 701, 706 (¶ 11) (Miss. 2019) (citing *Coahoma Cnty. v. City of Clarksdale (In re City of Clarksdale)*, 267 So. 3d 236, 242 (¶ 8) (Miss. 2019)). They are

(1) spillover development into the proposed annexation area; (2) the City’s internal growth; (3) the City’s population growth; (4) the City’s need for development land; (5) the need for planning in the annexation area; (6) increased traffic counts; (7) the need to maintain and expand the City’s tax

base; (8) limitations due to geography and surrounding cities; (9) remaining vacant land within the municipality; (10) environmental influences; (11) the [C]ity’s need to exercise control over the proposed annexation area; and (12) increased new building permit activity.

Id. (alteration in original) (quoting *In re City of Clarksdale*, 267 So. 3d at 242–43 (¶ 8)).

¶8. Of the twelve subfactors, Pendorff does not contest six subfactors,¹ agreeing they are reasonable and support Laurel’s need to expand. Accordingly, we will address the subfactors that Pendorff contests.

A. Internal Growth

¶9. In *City of D’Iberville v. City of Biloxi (In re City of Biloxi)*, 109 So. 3d 529, 541 (¶ 21) (Miss. 2013), our Court affirmed the chancellor’s ruling that Biloxi had experienced internal growth. “The chancellor [had] combined the internal growth analysis with that of increased new building permit activity” to find that Biloxi had experience internal growth.

Id. The chancellor “found that Biloxi had seen an increase in the issuance of permits from 222 in 2000 to 696 in 2007 and 501 in 2008, and had issued a total of 11,840 permits since 2004.” *Id.*

¶10. Here, the chancellor combined the new-building permit activity and all other permit activity in his analysis to determine that Laurel had experienced internal growth. Between 2005 and 2018, Laurel issued 295 new single-family residential-unit permits, 170 new multifamily residential-unit permits, and 152 new commercial permits. Throughout that same time, Laurel issued almost 10,500 other permits for a combined total value of \$359 million. The chancellor also noted that Pendorff’s expert “[Jay] Estes agreed that the

¹ Pendorff does not contest subfactors one, five, seven, eight, ten, and eleven.

construction of new homes constitutes internal growth and that over \$360,000,000 in permits reflect a component of internal growth.”

¶11. Pendorff does not argue that Laurel lacks internal growth. Instead, Pendorff contends that Laurel’s internal growth “is minimal at best.” Estes testified that “the city of Laurel is not experiencing . . . *significant* internal growth, based on . . . housing starts [and] based on building permit data.” Estes also testified that Laurel is growing “a little bit or . . . flatlined at best.” “[Our] Court, in concluding that the City of Ridgeland had a need to expand, relied on supporting evidence which included expert testimony on increased new building permit activity” *Hale v. City of Clinton (In re City of Clinton)*, 955 So. 2d 307, 314 (¶ 12) (Miss. 2007) (citing *City of Jackson v. City of Ridgeland (In re City of Ridgeland)*, 651 So. 2d 548, 553-56 (Miss. 1995)).

¶12. We acknowledge that Laurel’s internal growth is not as significant as Biloxi’s. But the chancellor relied on supporting evidence, which included expert testimony that Laurel is experiencing internal growth. Accordingly, the Court affirms the chancellor’s findings that the subfactor of internal growth weighs in favor of Laurel’s need to expand.

B. Population Increase

¶13. In *In re City of Clarksdale*, “[t]he evidence was undisputed that Clarksdale’s population [wa]s in decline.” *In re City of Clarksdale*, 267 So. 3d at 244 (¶ 13). The *Clarksdale* Court noted that Clarksdale’s “only population gains the past fifty years occurred though an annexation in 1992” *Id.* But Clarksdale did present expert testimony that its population “density was high at 1,292 [people] per square mile” *Id.* Clarksdale argued

that such a densely populated area supported its need to expand, despite evidence showing “that, between 2000 and 2010, Clarksdale had lost 20 percent of its population.” *Id.* The *Clarksdale* Court noted that “[t]he chancellor found that Clarksdale’s population decrease was substantial and did not weigh this subfactor in favor of either party.” *Id.* (¶ 14).

¶14. Though the *Clarksdale* Court found no manifest error by the chancellor, the Court explained, “[t]h[e] Court has held that an annexation was reasonable despite the fact that the municipality’s population was declining because the population density was high.” *Id.* (citing *In re City of Biloxi*, 109 So. 3d at 542 (¶ 25) (holding that Biloxi’s population density was high at an estimated 1,144 people per square mile and that such density supported the need to expand)); *see also In re City of Clinton*, 955 So. 2d at 315 (¶ 14) (recognizing that Clinton’s “very dense” population of one thousand people per square mile supported the need to expand).

¶15. Here, like *In re City of Clarksdale*, it is undisputed that Laurel’s population decreased from 1970 to 2000. But from 2000 to 2010, Laurel’s population increased from 18,393 to 18,540. Moreover, a 2016 Census estimate conducted by the United States Census Bureau shows that Laurel’s population increased from 18,540 to 18,806 from 2010 to 2016. Michael Slaughter, Laurel’s expert, testified that Laurel has a dense population with 1,142 people per square mile. Pendorff does not contest Laurel’s population density or that Laurel’s population has increased. Instead, Pendorff argues that “during 2010 to 2016 Laurel’s population *only increased* by 266 residents”

¶16. The chancellor relied on Slaughter’s testimony and the ruling in *In re City of Clinton* when he found that Laurel’s population increase and density supported its need to expand. Reiterating the standard, the Court is bound by an elevated deference in our annexation review, and based on the above evidence, we cannot hold that the chancellor’s finding was manifestly wrong. Therefore, we affirm.

C. *Need for Development Land*

¶17. “Th[e] Court has held that it has ‘declined to set an absolute amount of usable vacant land that would prevent annexation.’” *In re City of Clinton*, 955 So. 2d at 315 (¶ 13) (quoting *Lamar Cnty. v. City of Hattiesburg (In re City of Hattiesburg)*, 840 So. 2d 69, 85 (¶ 35) (Miss. 2003)). Our Court has approved the annexation request of multiple cities with usable vacant land far higher than that of Laurel. *See In re City of Ridgeland*, 651 So. 2d at 554–55 (affirming annexation despite Ridgeland’s having 48.4 percent of vacant land); *see also In re City of Madison*, 650 So. 2d at 496 (affirming annexation despite Madison’s having more than 50 percent of vacant, developable land).

¶18. Pendorff admits that Laurel’s 7.7 percent of vacant and unconstrained land is “a low number.” Despite its concession, Pendorff argues that even if Laurel annexes the PAA, the annexation would only increase Laurel’s developable land by 2 percent to 9.7 percent. The Court agrees. But as explained by the chancellor, the annexation of the PAA will increase Laurel’s vacant and developable land by almost 30 percent. The chancellor also noted that Pendorff’s own expert, Estes, testified that he could not identify a city in Mississippi with less vacant, developable land than Laurel. Based on the above-mentioned case law and the

fact that Laurel’s vacant, unconstrained land is only 7.7 percent, the Court affirms the chancellor’s ruling that Laurel needs developable land.

D. Increased Traffic Counts

¶19. In *In re City of Biloxi*, our Court affirmed the chancellor’s ruling that Biloxi’s increased traffic counts weighed in favor of annexation. *In re City of Biloxi*, 109 So. 3d at 544 (¶¶ 37–39). In *In re City of Biloxi*, “the chancellor found that the new Highway 67/15 corridor had significantly increased the daily traffic volume within the Biloxi Critical Area.” *Id.* (¶ 37). Affirming the chancellor, our Court explained, “[t]he evidence shows increased traffic counts in the PAA” *Id.* (¶ 39).

¶20. Here, the chancellor relied on Slaughter’s testimony and exhibits related to Laurel’s increased traffic counts when weighing the subfactor in favor of annexation. Pendorff concedes that Laurel’s traffic counts increased. But Pendorff argues that the counts are just “raw number data, and [Slaughter] did not determine the cause of the slight increase.” While it is true that Slaughter provided no reason for the increased traffic counts throughout the PAA, the undisputed fact remains—traffic counts are increasing. Thus the chancellor did not commit manifest error by weighing the traffic count subfactor in favor of annexation. Accordingly, we affirm the chancellor’s ruling.

¶21. Arguing against Laurel’s need to expand, Pendorff asserts that “[t]here is not substantial or credible evidence that Laurel needs to expand, and particularly, *expand into [the PAA].*” (Emphasis added.) Yet Pendorff contradicts its own expert. Estes testified that “Laurel *does need to annex, but not necessarily where they’re attempting to annex.*”

(Emphasis added.) With that said, Pendorff’s argument is puzzling. Nevertheless, we affirm the chancellor’s ruling that Laurel has a need to expand.

II. City of Laurel’s Financial Ability to Make Improvements and Furnish the Promised Services

¶22. Seven factors guide the Court’s analysis when determining whether a reasonable financial ability to provide municipal services to a PAA. The factors are

(1) 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.

City of Horn Lake v. City of Southaven (In re City of Southaven), 5 So. 3d 375, 379 (¶ 18) (Miss. 2009) (quoting *Neal v. City of Winona (In re City of Winona)*, 879 So. 2d 981–82 (¶ 38) (Miss. 2004)).

¶23. Of the seven subfactors, Pendorff concedes three.² Therefore, the Court will address the subfactors that Pendorff contests.

A. Sales-Tax Revenue History

¶24. Pendorff argues that “Laurel’s sales tax revenue history does not indicate a gradual increase in sales tax diversions from the year 2012 to 2017.” Pendorff asserts that Laurel spun the data when arguing that sales-tax diversions had remained relatively stable. But the chancellor stated that Laurel’s sales-tax revenue had “remained relatively stable” as it fluctuated between \$8.1 and \$9.8 million.

² Pendorff concedes subfactors one, three, and five.

¶25. The chancellor gave weight to the testimony of Mary Ann Hess, an expert in the field of municipal administration and finance. Hess testified that for fiscal years 2016 and 2017, the sales-tax revenue declined from \$8.7 to \$8.1 million. But Hess also testified that for the fiscal year 2018, Laurel expects sales-tax receipts to be approximately \$8.8 million.

¶26. In *In re City of Southaven*, “the chancellor gave deference to [an expert’s] positive review of the City [of Southaven’s] sales tax history as well as to Mayor Greg Davis’s testimony attesting to the increase in the City’s sales tax revenues” *In re City of Southaven*, 5 So. 3d at 379–80 (¶ 21). The *Southaven* Court, when reviewing the chancellor’s decision, explained, “[i]t is within the prerogative of the chancellor to accept or reject the testimony of any witness, to consider all facts not in dispute, and to make his decision accordingly.” *Id.* at 380 (¶ 24) (citing *In re City of Laurel*, 922 So. 2d 791, 798 (¶ 19) (Miss. 2006)).

¶27. Here, the chancellor acknowledged Laurel’s fluctuating sales-tax history. But the chancellor also noted that “Ms. Hess explained that the City’s 2018 sales-tax receipts will exceed the City’s budgeted receipt amount.” Moreover, the evidence proves that Laurel’s sales-tax revenue for 2018 is trending upwards. Because the chancellor accepted and gave deference to Hess’s testimony regarding Laurel’s sales-tax revenue, the Court affirms the chancellor’s findings that the subfactor weighs in favor of annexation.

B. Financial Plan and Department Reports Proposed for Implementing and Fiscally Carrying out the Annexation

¶28. Pendorff presents a red herring in its argument: Laurel did not provide a proper plan for implementing and carrying out its annexation of the PAA. Pendorff posits that Laurel’s

plan lacks details on how it intends to provide water and sewer improvements. Yet Pendorff ignores the fact that its own municipal finance expert, Joe Townsend, opined that he has “no concerns at all” about the rest of Laurel’s financial plan concerning the implementation of police, fire, and other governmental activities and improvements. Instead, Pendorff focuses on the one-department plan that in its expert’s opinion, did not demonstrate the degree of financial planning he would “prefer to see.”

¶29. The chancellor ruled that “Laurel demonstrated a good degree of planning both for the provision of governmental services and water and sewer improvements in the PAA[.]” The chancellor continued, explaining “Laurel . . . undertook extensive planning with regard to the water and sewer improvements” In fact, Laurel’s plan detailed what type of water and sewer equipment will be installed in the PAA if annexation is approved. As to the financing options available to Laurel, Pendorff’s own expert agreed that he “ha[d] no problem with the listing of those options.” Importantly, the chancellor noted that “there was no dispute among the financial experts at trial that Laurel adequately planned and has the financial ability to provide governmental services” The chancellor ruled that the subfactor weighed in favor of annexation. We agree.

¶30. Assuming *arguendo* that Laurel’s water and sewer plan were not as detailed as Pendorff would prefer to see, “[w]here there is conflicting credible evidence, [the Court] defer[s] to the findings below.” *Gousset v. City of Macon (In re City of Macon)*, 854 So. 2d 1029, 1034 (¶ 8) (Miss. 2003) (internal quotation marks omitted) (quoting *Comm. Opposed to Annexation v. City of Batesville (In re City of Batesville)*, 760 So. 2d 697, 705

(¶ 8) (Miss. 2000)). Therefore, assuming conflicting, credible evidence exists about how specific Laurel’s water and sewer plans should be, the Court acknowledges and applies the above deference to the chancellor’s ruling. Accordingly, we affirm.

C. Bonding Capacity

¶31. Pendorff argues that though “*it may be the subject of opinion* as to whether [Laurel] [has] . . . a healthy bonding capacity, no evidence was presented as to how much of this bonding capacity would be used in paying for the proposed improvements” (Emphasis added.) Again, Pendorff presents a red herring to distract from the fact that Laurel’s bonding capacity passes muster. The chancellor’s *findings of fact and conclusions of law* explain that “Laurel has a healthy bonding capacity should the City ever need it.” The chancellor relied on Hess’s extensive testimony regarding the numerous financing options available to Laurel. Hess testified that Laurel has more than \$5.6 million in bonding capacity, more than eighteen years of clean audits, and an A-plus rating from Standard & Poor’s global ratings.

¶32. The chancellor based his decision on the evidence and facts presented during trial. Accordingly, the Court affirms the chancellor’s finding of fact, and we weigh the subfactor in favor of annexation.

D. Expected Amount of Revenue to be Received from Taxes in the PAA

¶33. Pendorff does not contest the chancellor’s findings that Laurel’s annexation will generate nearly \$1.2 million of surplus over the next five years. Pendorff does not contest that from a revenue standpoint, the annexation of the PAA is self-sustaining. Instead, Pendorff argues that “Laurel fail[ed] to incorporate these figures into any detailed plan as to

how to fund the promised improvement.” Pendorff’s argument is without merit. The chancellor deferred to the expert testimony and the evidence presented when concluding that the subfactor weighed in favor of annexation. Accordingly, the Court affirms the chancellor’s findings.

¶34. Demonstrated above, Pendorff concedes almost half of the subfactors. Even considering the subfactors that Pendorff did contest, the Court discerns no manifest error on the part of the chancellor. Therefore, the Court affirms the chancellor’s findings that indicium four weighs in favor of annexation.

CONCLUSION

¶35. Because the chancellor relied on substantial and credible evidence, the Court can discern no manifest error in the chancellor’s approval of Laurel’s annexation of the PAA. Accordingly, the Court affirms the chancellor’s decision.

¶36. **AFFIRMED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.