IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-AN-00639-SCT

IN THE MATTER OF THE ENLARGEMENT AND EXTENSION OF THE MUNICIPAL BOUNDARIES OF THE CITY OF PETAL, MISSISSIPPI: THE CITY OF PETAL, MISSISSIPPI, A MUNICIPAL CORPORATION

v.

GULF SOUTH PIPELINE COMPANY, LP, ENERGY TRANSFER PARTNERS, LP, LONE STAR NGL HATTIESBURG, LLC, PIERCE CONSTRUCTION & MAINTENANCE CO., INC., ENTERPRISE PRODUCTS OPERATING LLC, CONCERNED CITIZENS OF FORREST COUNTY AREAS 4, 5 & 6, LLC, GREGORY L. GORE AND DEBRA WAITES

DATE OF JUDGMENT:	03/25/2019
TRIAL JUDGE:	HON. ROBERT L. LANCASTER
TRIAL COURT ATTORNEYS:	JAMES H. HERRING ROBIN L. ROBERTS PATRICK H. ZACHARY THOMAS W. TYNER ROCKY WAYNE EATON J. CHADWICK MASK JOHN PRESTON SCANLON CLIFTON MICHAEL DECKER HEATHER ELIZABETH MURRAY CHRISTOPHER M. HOWDESHELL JERRY A. EVANS MICHAEL PATRICK EVERMAN WILLIAM L. SMITH SHELDON G. ALSTON WILLIAM DEMENT DRINKWATER
COURT FROM WHICH APPEALED:	FORREST COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	ROCKY WAYNE EATON JERRY A. EVANS

ATTORNEYS FOR APPELLEES:	W. LUCIEN SMITH SHELDON G. ALSTON CHRISTOPHER M. HOWDESHELL WILLIAM DEMENT DRINKWATER MICHAEL PATRICK EVERMAN WILLIAM L. SMITH
NATURE OF THE CASE:	CIVIL - MUNICIPAL BOUNDARIES & ANNEXATION
DISPOSITION:	AFFIRMED - 09/10/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KING, P.J., MAXWELL AND GRIFFIS, JJ.

MAXWELL, JUSTICE, FOR THE COURT:

¶1. The City of Petal's March 30, 2017 Amended Annexation Ordinance sought to add six square miles, spread across five different locations, to the City's limits. The proposed annexation would also add 296 residents to the City. For Special Chancellor Robert Lancaster to approve the City's petition to ratify, the City had to prove the annexation was reasonable.[1] But the chancellor found the City did not fully meet that burden.

¶2. After a six-day trial, numerous lay and expert witnesses, 139 exhibits, and personal site inspections by Judge Lancaster, he found a modified annexation acceptable. He determined the City already had sufficient available land within its current limits for residential and commercial development. And he found it more beneficial and reasonable for the City to update zoning and improve infrastructure than to approve annexation of an industrial area and two mostly undeveloped and unpopulated areas.

[1] ***City of Saltillo v. City of Tupelo (In re City of Tupelo)***, 94 So. 3d 256, 266-67 (Miss. 2012).

¶3. But there were two smaller proposed areas the judge deemed reasonable for annexation. The City's last annexation, finalized in 2003, resulted in some parcels or tracts of land erroneously split between the City and Forrest County.[2] So the chancellor granted the City's petition, as modified, to correct those errors. The City has now appealed.

¶4. In annexation appeals, this Court employs a limited and quite deferential review. Rather than address all issues anew, we focus on whether substantial and credible evidence supports the special chancellor's decision.[3] Because here we find the judge's decision is so supported, we affirm.

Background Facts and Procedural History

¶5. The City of Petal incorporated in 1974. Its first, and until now only, annexation concluded in 2003. From that annexation the City acquired what are known as the West Annexation Area, to the City's northwest, and the East Annexation Area, to the City's east. Those areas nearly doubled the City's size and increased its population significantly.

¶6. On May 6, 2016, the City adopted an ordinance for a second annexation. This time, the City sought to annex six additional tracts of land. The Proposed Annexation Areas included: (1) land along the Evelyn Gandy Parkway (Highway 42) stretching from Petal north-westward past Interstate 59; (2) industrial land north of Petal along Highway 11; (3) a City road that ends in a county cul-de-sac; (4) land along Highway 42 running from Petal east to the county line; (5) land southeast of Petal where parcels or lots were split between

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[2] ***Prestridge v. City of Petal***, 841 So. 2d 1048 (Miss. 2003).

[3] ***Wilson v. Town of Terry (In re Town of Terry)***, 227 So. 3d 917, 919 (Miss. 2017).

the City and county line; and (6) land south of Petal extending south past Sunrise Road. The City filed its complaint to ratify the May 6 Annexation Ordinance in Forrest County Chancery Court on June 22, 2016. All chancellors in the Tenth Chancery Court District recused. So this Court appointed Special Chancellor Robert L. Lancaster to hear the case.

I. Summary Judgment on Area 1

¶7. Area 1 included neighborhoods in Glendale along with portions of the Glendale Utility District. Citizen groups and the Utility District moved to intervene and dismiss the annexation. Their argument was straightforward—the City's proposed Area 1 annexation violated "Chapter 505, Local and Private Laws of 1956 (Senate Bill 1752)." Senate Bill 1752 authorizes Forrest County to create water, sewer, or fire protection districts in unincorporated county areas where none otherwise exist. And to ensure services continue uninterrupted, Section 6 of Senate Bill 1752 has an "all or nothing" or "poison pill" requirement—meaning the City had to annex the entire Glendale Utility District or nothing at all.

¶8. Judge Lancaster entered orders converting the motions to dismiss to motions for summary judgment. The citizen groups and Utility District filed summary judgment motions and supporting memoranda, or they filed joinders. The City filed its response in opposition. On November 8, 2016, Judge Lancaster granted partial summary judgment denying Area 1's annexation under Section 6 of Senate Bill 1752. The City did not appeal. When the City later filed an amended complaint, an agreed order was entered that Judge Lancaster's

summary judgment decision on Area 1 was the law of the case.[4] The remaining five areas went to trial.

II. Trial on Areas 2, 3, 4, 5, and 6

¶9. Many companies, groups, and individuals objected to the City's remaining proposed annexation. For Area 2 (1) Lone Star NGL Hattiesburg, LLC, (2) Gulf South Pipeline Company, (3) Enterprise Products Operating, LLC, (4) ELTM, L.P., (5) Diversified CPC, (6) Pierce Construction & Maintenance Co., Inc., (7) Hub City Steel, (8) Vulcan Materials, and (9) Dunn Roadbuilders (collectively, gas/non-gas companies) objected to annexation. The Concerned Citizens of Forrest County Areas 4, 5, & 6, LLC, objected to annexing Areas 4, 5, and 6. And lastly, Gregory L. Gore and Debra Waites entered pro se appearances objecting to Area 4's annexation. No objectors appeared for Area 3.

¶10. The parties complied with an agreed scheduling order requiring they submit proposed findings of fact and conclusions of law before trial. The submissions are extensive and detailed. They discuss this Court's twelve factors and related subfactors for an annexation's reasonableness.[5] The parties also entered a sixty page pretrial order. This order (1) listed the claims and counterclaims; (2) addressed the trial court's jurisdiction; (3) included summaries for each party's claimed facts; (4) set forth the facts established by the pleadings, by stipulation or by admission; (5) detailed the contested issues of fact and contested issues of

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[4] The City's May 6, 2016 Annexation Ordinance had legal description errors, so the City adopted an amended Annexation Ordinance on March 30, 2017. This required the City to issue new notices and publications, along with an amended complaint. The City did not remove Area 1 from the amended ordinance or amended complaint.

[5] ***In re City of Tupelo***, 94 So. 3d at 266-67.

law; (6) identified each exhibit the parties would seek to introduce; and (7) noted each witness the parties anticipated calling, along with a summary of their expected testimony.

¶11. The trial lasted six days. The chancellor admitted 139 exhibits—including maps, plans, photographs, and even an aerial video. Twenty-four lay and expert witnesses testified. And Judge Lancaster visually inspected Areas 2, 4, 5, and 6, along with areas within the City's current limits.

A. For the City

¶12. The City called numerous officials to testify. Each described their department and the services and/or oversight it provides the City. The officials testified about why the proposed annexation areas needed those services, along with their department's ability to provide them. The City built its case on comparing county services against the City's, urging municipal level services would better benefit residents. The City called two residents from Area 6. Both supported annexation and testified about why they thought it was necessary.

¶13. Other notable testimony came from the City's expert witnesses—Michael Slaughter, the City's planner; John Weeks, the City's engineer; and Doug King, the City's accountant. These witnesses gave the details for the City's proposed annexation. Michael Slaughter and his firm had helped develop and produce the City's annexation plans. He touched on nearly every one of this Court's factors and subfactors pertinent to an annexation's reasonableness.[6] These experts described the particular infrastructure needs and projects for the proposed areas, along with the benefits and costs of those projects.

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[6] ***Id.***

B. For the Objectors

¶14. The proposed areas represented at trial are markedly different. Area 2 is industrial and is occupied primarily by companies in the hydrocarbon industry. Areas 4, 5, and 6 are sparsely populated or developed. While some expert testimony applied to Areas 4, 5, and 6, the primary focus was on Area 2.

¶15. Area 2 called several gas-company representatives to testify. Each described their company and the work it performs. Because the hydrocarbon industry—according to expert testimony—is second only to the nuclear industry in regulatory terms, each witness testified about their company's compliance and preparedness for gas-related emergencies or accidents. Each company witness testified about their particular company's investments in the City and county, and explained the financial and tax consequences of annexation.

¶16. Area 2 also called several expert witnesses. Thomas Rodante, an engineering and risk expert for petroleum companies, gave his risk assessments for the gas companies. George Null, a Hattiesburg-based real estate appraiser and developer, and Chris Watson, a city planning expert, each testified about why Area 2 was not suitable for annexation.

¶17. Areas 4, 5, and 6 called two fire chiefs of volunteer fire departments in the county. Each described their department's capabilities. Both testified that they met the firefighting needs within their coverage district. Several residents and a local business owner also testified. Each gave their observations about development, or lack thereof, around their property or business. And they all emphasized that county services were sufficient, and they did not want the varying restrictions or costs associated with the City's involvement.

¶18. When the trial ended, Judge Lancaster gave the parties an opportunity to resubmit fact findings and conclusions of law based on trial testimony and evidence. The City and Area 2 took up his offer and resubmitted their proposals. On January 15, 2019, Judge Lancaster filed his Memorandum Opinion. He denied the City's proposed annexation of Areas 2, 4, and 6, finding it unreasonable. But he granted annexation of Areas 3 and 5 to cure property-line errors created during the 2003 annexation.

¶19. A footnote in Judge Lancaster's opinion provides an excellent summary. As he put it, "[t]he City expressly avoided annexing existing subdivisions near the City because 'rooftops do not pay their way.' This annexation seeks to take primarily undeveloped lands from which to create a tax base in Areas 4 and 6 and to take Area 2 for an existing tax base." And in his denial of Area 2, he further stated, "[t]he only possible need for the City to annex Area 2 is to increase the amount of taxes it can collect . . . [and] [t]he City has shown no realistic and existing need for such an immediate large increase in taxes." The City now appeals.

Discussion

¶20. The issues before this Court are (1) whether the City timely filed its appeal and (2) whether the special chancellor's decision to exclude Areas 2, 4, and 6 from annexation is supported by substantial and credible evidence.

¶21. Mississippi Code Sections 21-1-21 and 21-1-37 set a ten-day time limit to file an appeal in an annexation case. The City did not file its appeal within ten days. While an appeal's timeliness is a jurisdictional question, the amount of time a party has to file an

appeal is a procedural one. Because the time to file an appeal in Sections 21-1-21 and 21-1-37 conflicts with the Mississippi Rules of Appellate Procedure, the Area 2 Appellees' motion to dismiss this appeal is denied and we hold the City timely filed its appeal. On the merits, the twelve reasonableness factors and related subfactors for annexations were extensively covered during trial. And the special chancellor's decision is well supported by substantial and credible evidence. This Court affirms his ruling.

I. Timeliness of Appeal

¶22. Mississippi Code Sections 21-1-21 and 21-1-37 became effective July 1, 1950. Section 21-1-37 provides that, in the manner and time set out in Section 21-1-21, an aggrieved party can appeal a chancellor's annexation decree. Miss. Code Ann. § 21-1-37 (Rev. 2015). Section 21-1-21 states, in full:

> Any person interested in or aggrieved by the decree of the chancellor, and who was a party to the proceedings in the chancery court, may prosecute an appeal therefrom to the supreme court within ten days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars with two good and sufficient sureties, conditioned to pay all costs of the appeal in event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk and shall operate as a supersedeas. If the decree of the chancellor be affirmed by the supreme court, then such decree shall go into effect after the passage of ten days from the date of the final judgment thereon, and the party or parties prosecuting such appeal and the sureties on their appeal bond shall be adjudged to pay all costs of such appeal.

Miss. Code Ann. § 21-1-21 (Rev. 2015). Simply put, the Mississippi Legislature decided a party should appeal an annexation decision within ten days. Annexations are legislative by nature. *See* ***In re City of Tupelo***, 94 So. 3d at 266. "Confirmation of annexations, however, is placed within the province of the chancery court." ***Id.*** (citing Miss. Code Ann. § 21-1-33

(Rev. 2007); ***City of Jackson v. City of Ridgeland (In re City of Jackson)***, 551 So. 2d 861, 863 (Miss. 1989)).

¶23. In 1966, this Court held Section 21-1-21 as a wholly jurisdictional statute. ***Wood v. Warren***, 193 So. 2d 123 (Miss. 1966). The Court repeated that view in ***Fisher v. Crowe***, 289 So. 2d 921 (Miss. 1974). These decisions have neither been abrogated nor overruled. But they do precede the Mississippi Rules of Appellate Procedure. And the question now is whether the ten-day time limit is jurisdictional or procedural. We find that time limit is procedural.

¶24. When there is a conflict between a statute and our rules over an appeal procedure, our rules control. ***Brown v. Collections, Inc.***, 188 So. 3d 1171, 1177 (Miss. 2016) (citing ***Stevens v. Lake***, 615 So. 2d 1177, 1183 (Miss. 1993)). Mississippi Code Section 21-1-21 states a party has ten days to appeal a chancellor's annexation ruling. Under Mississippi Rules of Appellate Procedure 1, 3, and 4, a party has thirty days after an order or judgment is entered to appeal. Here, the City acknowledges it filed its appeal in fifteen days, but argues that our Rules control. And we agree.

¶25. This is an appeal from within the judicial branch, and not an appeal from a legislative or executive decision for judicial review. *See, e.g.*, ***Lowndes Cnty. Bd. of Supervisors v. McClanahan***, 161 So. 3d 1052 (Miss. 2015) (holding the ten-day time limit to challenge a *city's* decision for judicial review as mandatory and jurisdictional). Here, the legislative actions concluded with the annexation ordinance's adoption by the City without contest. The City asked the chancery court to ratify and give effect to the City's decision. And the City,

dissatisfied with that court's ruling, appealed to this Court.

¶26. Thus, this Court overrules ***Wood*** and ***Fisher*** to the extent those decisions declare an aggrieved party must appeal an annexation decree within ten days. Because under our Rules a party has thirty days to appeal, this Court denies the Appellees' motion and argument and accepts the City's appeal as timely filed.

II. Reasonableness of Annexation

¶27. "'The role of the judiciary in annexations is limited to one question: whether the annexation is reasonable.'" ***In re Town of Terry***, 227 So. 3d at 919 (quoting ***City of Jackson v. City of Madison (In re City of Madison)***, 650 So. 2d 490, 494 (Miss. 1995)). "This Court will not reverse a chancellor's finding of reasonableness unless that finding is manifestly wrong and/or not supported by substantial and credible evidence." ***Id.*** (citing ***In re City of Tupelo***, 94 So. 3d at 266). There are twelve factors to determine reasonableness:

> (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 municipal services promised, (5) need for zoning and overall planning in the area, (6) 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) past performance and time element involved in the city's provision of services to its present residents, (9) economic or other impact of the annexation upon those who live in or own property in the proposed annexation area, (10) impact of annexation upon the voting strength of protected minority groups, (11) whether the property owners or 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.

In re City of Tupelo, 94 So. 3d at 266-67 (quoting ***City of Horn Lake v. City of Southaven (In re City of Southaven)***, 5 So. 3d 375, 376-77 (Miss. 2009)). These factors "must be considered collectively to determine whether, under the totality of the circumstances, annexation was reasonable." ***In re Town of Terry***, 227 So. 3d at 919 (citing ***In re City of Tupelo***, 94 So. 3d at 266).

¶28. Judge Lancaster "considered the twelve indicia of reasonableness and to a large extent there is no factual dispute on many of them."[7] So his opinion does not make specific findings on each and every factor or related subfactors.[8] Rather, while considering the totality of the circumstances, he focused on those "particulars that the Court determined the most important ones" to reach his decision on a given area. This Court must examine whether the evidence supports those specific factors that tipped the scale for or against annexation.

Area 2

¶29. The City attempted to annex Area 2 in its last annexation. Like the last time, Area 2 is the lynchpin to the City's overall proposed annexation. But Judge Lancaster found Area 2 (1) had little land left for development and had not experienced new growth; (2) did not need the City's offered services or oversight; (3) would not timely receive City services based on past performance; and (4) would receive few benefits for a significant increase in taxes. Like the previous attempt, the trial court again denied annexation.

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[7] For example, an uncontested factor is that annexation had little to no impact on protected minority groups.

[8] He notes, "[t]here is simply too much in the record to discuss it all in this opinion." And he did not include every fact and factor "for [the] purpose of some brevity in rendering the opinion."

a. Path of Growth

¶30. Generally, a city "need only show that the areas desired to be annexed are in 'a' path of growth[;] this does not mean that the area is 'the most urgent or even the city's primary path of growth.'" ***Neal v. City of Winona (In re City of Winona)***, 879 So. 2d 966, 977 (Miss. 2004) (quoting ***Lamar Cnty. v. City of Hattiesburg (In re City of Hattiesburg)***, 840 So. 2d 69, 86 (Miss. 2003)). That burden remains with the City. And here the City failed to meet its burden.

¶31. Area 2 sits above a natural salt dome. Since the 1950s—well before the City incorporated—petroleum companies have used the dome to store gas underground. Except for Pierce Construction, Hub City Steel, Vulcan Materials, and Dunn Roadbuilders, the companies in Area 2 are all in the gas business. The western part of Area 2 is bound by the Leaf River and is either marshlands or falls in a flood-plain. Thus, the judge found further development in that area unlikely. The eastern part of Area 2 is already occupied by the gas or non-gas companies, the most recent addition being Dunn Roadbuilders in 2002 or 2003. Watson estimated only 106 acres remained available for development in Area 2, while Null's estimate put it at 168 acres—only 13.8 percent of Area 2. This scarcity of land prompted the chancellor to find Area 2 had limited potential for expansion or development. And because it had little to no growth since the City attempted to annex the area in 2003, the judge determined the City was not growing in that direction.

b. Need for Municipal Services

¶32. A city may show a proposed annexation area needs municipal services through the

"(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." ***In re City of Southaven***, 5 So. 3d at 380 (citing ***In re City of Winona***, 879 So. 2d at 984).

¶33. The City promised to provide, among other services, water lines for firefighting, sewer lines, and building code and zoning oversight. But these City-based services are not necessary. And the companies and citizens in Area 2 do not want them.

¶34. Still, the City proposed a $2,149,000 looped water line for fire protection in Area 2. The chancellor found, however, that the gas companies already have "sufficient provision for firefighting including water for regular fires and . . . professional well fire fighters for gas fires." Indeed, the Petal Dome Emergency Response (PDER) plan sets out how explosions, well fires, or other severe gas-related emergencies are dealt with in Area 2.[9] The City's responsibilities under the PDER plan are limited to blocking access to the area and, if necessary, evacuating citizens. For the remaining firefighting needs in Area 2, the chancellor found the needs are met by volunteer fire departments.

¶35. Next, the City proposed a $2,859,000 sewer line. All the parties agree soil conditions in Forrest County are poor for septic tanks or other onsite wastewater systems. And while septic tanks may indicate possible health risks, this is a rather insignificant factor overall.

[9] There are seventeen different businesses, organizations, and agencies on the PDER plan task force. The plan coordinates task force members and sets out responsibilities for various gas-related emergencies, in order to protect residents in Hattiesburg, Petal, and the surrounding areas.

See ***Holmes v. Town of Leakesville (In re Town of Leakesville)***, 283 So. 3d 701, 709 (Miss. 2019). In fact, John Weeks, the City's engineering expert, testified that onsite wastewater treatment is acceptable. And he was unaware of any existing health hazards from onsite systems. Judge Lancaster found, while septic tanks are not ideal, the City failed to point out any existing health hazards from the use of septic tanks in any proposed annexation area. The chancellor also found the sewer's cost prohibitive. Therefore, he concluded existing onsite wastewater and sewage treatment or septic tanks already meet the area's needs.

¶36. The last factor is the City's promised zoning and code enforcement. This is perhaps the strongest argument against the entire annexation. The City's most recent Comprehensive Plan is from 2005. And the City's current zoning ordinances zone all newly annexed areas as single family residential (R-1 residential) for the first six months after annexation. This Court affirmed annexations "even where the City does not plan to provide zoning and planning and where the County has in force its own zoning and planning ordinances." ***Poole v. City of Pearl (In re City of Pearl)***, 908 So. 2d 728, 739 (Miss. 2005) (internal quotation mark omitted) (quoting ***Gousset v. City of Macon (In re City of Macon)***, 854 So. 2d 1029, 1041 (Miss. 2003)). But as Judge Lancaster found, the City "has not sufficiently planned in advance" because "[t]he present zoning ordinances are woefully lacking with regard to annexation and pose serious problems for land owners in the proposed annexation areas until they are properly rezoned from R-1." What is telling is Slaughter's testimony that the City should bring in annexed land unzoned, use the updated comprehensive plan, once finalized, and have public hearings to determine how newly annexed land should be zoned. But the

City did not follow that advice. Instead, it left in place actively harmful zoning ordinances.

c. Past Performance

¶37. "'This Court evaluates this indicium by looking at the municipality's performance in previous annexations and whether it has provided promised services to its residents.'" ***City of Jackson v. Byram Incorporators***, 16 So. 3d 662, 689 (Miss. 2009) (quoting ***City of Jackson v. City of Ridgeland (In re City of Jackson)***, 912 So. 2d 961, 969 (Miss. 2005)).

¶38. Doug King, the City's accountant, testified sewer improvements "would not begin on the front end" of annexation due to the City's debts. Instead, King said sewer improvements "would begin at some point further down the road and I think closer to 2024," when the debts were largely paid down. In the 2003 annexation, the City promised to provide a sewer system to the West Annexation Area within five years. But fifteen years later, the City still has not delivered. The City claims there is no current need for sewer infrastructure. Alternatively, the City argues that because it did not receive every proposed area in its last annexation, the sewer infrastructure was not economically justified. Judge Lancaster found the City's promised sewer lines face the same fate here, as the City had "no definite plan or timetable to provide" sewer systems.

d. Taxes

¶39. Enterprise and Gulf South had property annexed by the City in 2003. And they are the City's two largest taxpayers, with Enterprise paying $348,045 and Gulf South paying $797,233.40, annually. Lone Star recently built a $13,000,000 brine pond within the City, so it now pays City taxes too. The City estimated the total assessed value of Areas 2-6 is

$12,886,809. Of that, Area 2's value alone is $11,086,225. Already substantial taxpayers, this would have Area 2 paying approximately 86 percent of all new taxes for the City, which the judge found was $512,294.45 annually. This Court takes a dim view on tax grabs. *See* ***Bunch v. City of Jackson (In re City of Jackson)***, 691 So. 2d 978, 982-83 (Miss. 1997). Taxes alone are insufficient to support annexation. *See* ***id.*** And as Judge Lancaster concluded, even if the companies and citizens in Area 2 wanted all the promised services and infrastructure, annexation still "would not be economically or otherwise fair to the land owners in Area 2 . . . ."

¶40. Judge Lancaster ultimately found the City was again attempting what it tried in 2003—to annex Area 2 to finance improvements in other areas. He denied Area 2's annexation as unreasonable. This Court affirms that decision.

Areas 4 and 6

¶41. Judge Lancaster also denied annexation of Areas 4 and 6. And we agree. He determined: (1) the City had no need for expansion; (2) these areas had no recent growth or are not in a path of growth; (3) the planned infrastructure is financially prohibitive and unreasonable; and (4) there is no need for municipal services and oversight. The judge also had concerns on what services and infrastructure the City can actually provide.

a. Need to Expand[10]

¶42. Slaughter testified that from 2000 to 2010, the City's population grew from 7,579 to

[10] There are twelve subfactors a chancellor may consider here. *See* ***In re City of Tupelo***, 94 So. 3d at 272. Judge Lancaster's opinion, however, focused mainly on the City's remaining available land and whether the City needed land for development.

10,454 residents. Based on the available data, he estimated the City's population in 2017 was 10,831—an increase of 377 people since 2010. As for land within the City, he testified that somewhere between 37.8 and 23 percent was unconstrained and available. That number depended on whether, and how much, the City's severe slope—anything over 15 percent—factored in. And he went on to say a city should not have less than 25 percent of its land available for development. By comparison, Null estimated the City had 2,900 available acres, which would take sixty years to develop given the City's development rate over the past twenty years.

¶43. This Court affirmed annexations where far more land was available and unconstrained within a city, "such as 'Southaven, Madison, and Ridgeland, which had usable vacant land of 43%, 59%, and 48% respectively.'" ***In re Town of Leakesville***, 283 So. 3d at 709 (quoting ***Hale v. City of Clinton (In re City of Clinton)***, 955 So. 2d 307, 315 (Miss. 2007)). And this Court even affirmed annexations where a city's population decreased, holding a "decrease in annual population growth, or even a 'decline' in overall population, does not necessarily weigh[] against the city's 'need for expansion.'" ***Id.*** (quoting ***In re City of Tupelo***, 94 So. 3d at 273). But in this instance, the City's population growth and seemingly limited available land do not warrant annexation of Areas 4 and 6.

¶44. Even after considering the slope constraint, the judge found there is sufficient available land within the City's limits. He determined there are "adequate locations within the City which are suitable for future residential growth" and found residential developments in the City had largely overcome the slope constraint. As for commercial development, he

found sufficient tracts of land existed along the Evelyn Gandy Parkway already within the City's limits. Amy Heath, the City's Building Department director, acknowledged as much on cross-examination, saying several businesses relocated from other parts within the City to the Parkway and it is currently the area for commercial development. Judge Lancaster concluded that "[p]roper planning and construction of infrastructure within the City will facilitate development and without that effort developers may be discouraged." Again, the City's Comprehensive Plan is not current. And the City's zoning map and ordinances need significant changes. Rather than grant large, undeveloped tracts to the City, investing in the "aging infrastructure"—as Mayor Hal Marx put it—and cleaning up zoning issues will better serve the City and residents.

b. Path of Growth

¶45. Area 4 is one square mile and has 111 residents. Area 6 is nearly three square miles and has 153 residents. The judge observed in Area 4 there "are some residences, some commercial sites, some places of worship, and some undeveloped tracts." One of the newest commercial sites, the Wagon Wheel Motel, was either remodeled or built ten to fifteen years ago, if not longer. While witness testimony varied about its age, clearly the building was not new. The remaining commercial sites are unimproved since they were constructed an estimated twenty or more years ago. Since there are already tracts available along the Parkway within the City's limits, Judge Lancaster concluded there is little along Highway 42 in Area 4 to attract commercial development. And he found the City is not growing into Area 4 currently and is not reasonably expected to in the near future. The same is true for

Area 6. There are a few residences and three small, old commercial sites in the area. Otherwise, the vast majority of Area 6 is undeveloped timber or pasture land. Judge Lancaster recognized, "Area 6 is not in a path of growth of the City that would create spillover growth into Area 6."

c. Financial Ability to Provide Services

¶46. The City is financially stable. King testified the City had a budget surplus and approximately $2,500,000 in the General Fund. But the City also had $15,810,000 in General Obligation Bonds outstanding as of March 2018.

¶47. Municipalities in this State are subject to maximum debt limits measured by percentages of the assessed value of all of a municipality's taxable property or "the assessment upon which taxes were levied . . . whichever is greater." Miss. Code Ann. § 21-33-303 (Rev. 2015). The City's 2017 assessed valuation was $102,399,611. Based on that figure, the City's accountant estimated the City had $4,660,000 available under the 15 percent of total assessed valuation debt limit and $4,670,000 available under the 20 percent of total assessed valuation debt limit. *Id.* But there is a problem.

¶48. For sewer lines, the City estimates it will cost $4,916,000 for Area 4, $1,657,000 for Area 5, and $5,613,000 for Area 6. For firefighting water lines, the City estimates $34,000 for Area 4, $17,000 for Area 5, and $2,503,000 for Area 6. That is $12,186,000 for sewer lines and $2,554,000 for water lines—a *minimum* total cost to the City of $14,740,000.

¶49. Cash and new debt cannot pay for all the projects. And with the estimated assessed value of Areas 3-6 at $1,800,584, new ad valorem taxes are unlikely to make up the

difference. This left only a considerable tax increase.[11] But Judge Lancaster found a tax increase would go to projects where "[t]he total is in the millions of dollars, and the number of people served is small. If the purpose is to entice future development, the Court is not persuaded that such is a reasonable approach for existing City taxpayers or potential City taxpayers in any annexed area." He pointed to ***Cole v. City of Jackson (In re City of Jackson)***, 698 So. 2d 490 (Miss. 1997), which highlights where high infrastructure costs to serve few residents weighed in favor of deannexation. He determined "[t]he City probably will not and probably should not provide these expensive City services for fire protection and sewer lines in a timely manner to the few residents of those areas."

d. Need for Municipal Services

¶50. As with Area 2, even if the costs were reasonable, municipal services and infrastructure are not needed in Areas 4 and 6. Septic tanks or onsite wastewater treatment sufficiently serve the businesses and residents in Areas 4 and 6. And the City does not identify any waste or health hazards in these areas. The Sunrise and Macedonia Volunteer Fire Departments meet Area 4's and Area 6's firefighting needs. The City's two Area 6 witnesses, Kevin Lewis and Erik Lowrey, testified in favor of annexation primarily for traffic policing and zoning and code enforcement. But the judge emphasized, "[t]he Court is not persuaded that these reasons, zoning and traffic policing, make the annexation of Area 6 reasonable. They provide reasons for annexation of Area 6, but their value to support

[11] There was some discussion at trial about revenue bonds, as opposed to general obligation bonds, but the City did not advance revenue bonds as a financing method for the proposed annexation areas. Judge Lancaster suspected this was because there were too few customers in the proposed annexation areas for such bonds.

annexation of Area 6 as reasonable is limited." Additionally, and dissimilar from Area 2, is the fact that "sparsely populated areas have less immediate need for municipal services than densely populated areas." ***In re City of Southaven***, 5 So. 3d at 380-81 (citing ***In re City of Winona***, 879 So. 2d at 984). These areas already lack the need for municipal services, but their small populations also disfavor this factor.

e. Other Factors

¶51. Judge Lancaster also questioned what services the City actually provided. We share the same concern. The City has no electric department; electricity is instead provided by Mississippi Power Company or Dixie EPA. The City only provides potable water within the original 1974 limits. Potable water outside those limits is provided by Eastabutchie Utility Association, Barrontown Utility Association, or Sunrise Utility Association. Natural gas is provided by Reliant Energy Resources Corporation. And the City no longer treats its own sewage. Instead, the City contracted with the City of Hattiesburg to treat its sewage and now sends sewage across the Leaf River to Hattiesburg's lagoon and treatment facility. Because the City itself would not provide utilities to the proposed annexation areas, it will either have to purchase utility districts and/or contract out services. And that, as the judge noted, has at least some bearing on the reasonableness and feasability of the City's promised services and infrastructure.

Areas 3 and 5

¶52. The City sought roughly six square miles of land in this annexation. Areas 3 and 5 are .7 acres and .2 square miles in size, insignificant relative to the City's overall request.

Due to errors from the 2003 annexation, Areas 3 and 5 have parcels split between the City and county. Area 3 is a City road that ends in a county cul-de-sac. And there were no objector's to Areas 3's annexation. The land in Area 5 is either residential or undeveloped, except for one commercial property used for weddings and receptions. Ultimately, the judge found "[a]nnexation is necessary" to correct parcels being divided between the City and county. There was one caveat—if Garden Drive is not a public road, then annexation of the wedding venue and the adjoining house site south of Garden Drive is unreasonable. If Garden Drive is private, those sites are too distant from a public road and access to a future sewer tap. In that instance, the City must amend the legal description for Area 5 to remove those parcels from annexation. Otherwise, the judge granted Area 3's and 5's annexation. And we agree with the chancellor's decision.

Conclusion

¶53. Because the City's evidence did not show Areas 2, 4, and 6's annexation was reasonable, the special chancellor properly denied annexation. But because the City did show annexing Areas 3 and 5 was necessary to fix legal description errors from its last annexation, the judge properly granted annexation. The chancellor's findings are supported by substantial and credible evidence, and this Court affirms his decision.

¶54. **AFFIRMED.**

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