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Mississippi Municipal
ATTORNEYS ASSOCIATION

1

MUNICIPAL PLANNING
CONSIDERATIONS: COMMON
COMPREHENSIVE PLANNING,
ANNEXATION, AND ZONING ISSUES

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2

PRESENTATION OVERVIEW

- ▣ Relationship Between Comprehensive Plans and Municipal Annexations
- ▣ Planning for a Municipality's Future
- ▣ Strategies for Comprehensive Planning
- ▣ Comprehensive Plans
- ▣ Municipal Annexations
- ▣ Municipal Zoning Overview

3

Relationship Between Comprehensive Plans and Municipal Annexation

- ▣ Comprehensive planning can generally be defined as a proactive measure in identifying the way you want your community to grow in the future and how you can make that vision a reality.
- ▣ Comprehensive Planning is, among other things, planning for the future growth and development of a municipality.
- ▣ Often times, comprehensive planning involves the assessment of conditions outside of the municipal boundaries, in areas marked for future municipal growth.
- ▣ Municipal police powers, however, largely stop at the boundaries of a municipality. *See, e.g., Miss. Code Ann. § 17-1-3.*
- ▣ Municipal annexation allows cities to exercise their police powers in the surrounding areas through planning, zoning, code enforcement, etc.

4

PLANNING FOR A MUNICIPALITY'S FUTURE WHAT IS A COMPREHENSIVE PLAN?

- ▣ It indicates in a general way how the leaders of the local government and the citizens want the community to develop over the next 20 to 25 years.
- ▣ A Comprehensive Plan document is a statement of public policy for the physical development of the entire community.

5

COMPREHENSIVE PLANS WHAT IS ITS PURPOSE?

- ▣ It charts a course for growth and change.
- ▣ It express the aims and ambitions of the community, delineating the form and character it seeks to achieve.
- ▣ It directs the physical development of the community and its environs in relation to its social and economic well being.
- ▣ In essence, the purpose of the Comprehensive Plan is to provide guidance and direction for the future of the city and its citizens and their overall *Quality of Life*.

6

COMPREHENSIVE PLANS WHY ARE THEY IMPORTANT?

- ▣ Promote and protect the health, safety, morals, and general welfare
- ▣ Guide future development decisions
- ▣ Guide future growth and development locations
- ▣ Identify long range visions for future growth over 20 to 25 years
- ▣ Establish a framework for other regulatory documents and decisions
- ▣ They are comprehensive

7

COMPREHENSIVE PLANS MINIMUM ELEMENTS

- ▣ *Miss. Code Ann.* 17-1-1(c) defines a comprehensive plan as a “statement of public policy for the physical development of the entire municipality or county adopted by resolution of the governing body.”
- ▣ Pursuant to *Miss. Code Ann.* 17-1-1(c), every comprehensive plan will consist of the following elements “at a minimum”:
 - i. Goals and Objectives
 - ii. Land Use Plan
 - iii. Transportation Plan
 - iv. Community Facilities Plan

8

COMPREHENSIVE PLANS GOALS AND OBJECTIVES

- ▣ At a minimum, the “goals and objectives” for the element of the Comprehensive Plan will address:
 - Residential, Commercial & Industrial Development;
 - Parks, Open Space, and Recreation;
 - Street and Road Improvements;
 - Community Facilities (e.g., libraries, police and fire stations, recreational buildings, etc.); and
 - Public Schools

9

COMPREHENSIVE PLANS LAND USE PLAN

- ▣ Designates in map or policy form the general distribution and extent of the uses of land for:

- Residential;
- Commercial;
- Industrial;
- Recreation and Open Space; and
- Public/Semi-Public Lands.

NOTE: Projections of population and economic growth for the area encompassed by the plan may be the basis for quantitative recommendations for each land use category.

10

COMPREHENSIVE PLANS TRANSPORTATION PLAN

- ▣ Depicts in map form the proposed classifications of all existing and proposed streets, roads, and highways (i.e., local, collectors, and arterials)
- ▣ Addresses all other forms of transportation pertinent to the local jurisdiction (i.e., truck, airport, bus, light rail, pedestrian, bike lanes, etc.)
- ▣ The **Transportation Plan** shall be a basis for a capital improvements program

11

COMPREHENSIVE PLANS COMMUNITY FACILITIES PLAN

- ▣ A basis for a capital improvements program including, but not limited to, the following:
 - Housing;
 - Schools;
 - Parks and Recreation;
 - Public Buildings and Facilities; and
 - Utilities and Drainage.

12

COMPREHENSIVE PLANS IMPLEMENTATION TOOLS

- ▣ Zoning Ordinance (text and map)
- ▣ Subdivision Regulations
- ▣ Architectural Design Review Ordinance
- ▣ Sign Ordinance
- ▣ Landscaping Ordinance
- ▣ Tree Ordinance
- ▣ Historic Preservation Ordinance
- ▣ Un-kept Property/Abandoned Automobile Ordinance
- ▣ Building/Housing Codes
- ▣ Floodplain Management Ordinance
- ▣ And most important: **Proper Enforcement of the Municipal Codes and Ordinances**

13

MUNICIPAL ANNEXATION Common Considerations: Potential Pros

- ▣ The city's need for developable land;
- ▣ The city's internal growth;
- ▣ Limited areas available for expansion;
- ▣ Increased urban development in the annexation area which creates a need for municipal services;
- ▣ **"Spillover"** of urban development from the existing city into the proposed annexation area;
- ▣ Requests for water, sewer, or other utility services from residents, businesses, or property owners in the proposed annexation area;
 - Voluntary Annexation
 - "Special Purpose" Annexation

14

MUNICIPAL ANNEXATION Common Considerations: Potential Pros

- ▣ A need to maintain and expand the city's tax base;
- ▣ The city's need to exercise control over the proposed annexation area;
- ▣ The need or requests for municipal-level services;
- ▣ The need for zoning and planning in the proposed annexation area in order to ensure public safety and welfare; and
- ▣ Potential health hazards from sewage and waste disposal in the annexation area.

15

MUNICIPAL ANNEXATION

Common Considerations: Potential Cons

MUNICIPAL ANNEXATION

Common Considerations: Potential Cons

MUNICIPAL ANNEXATION Common Considerations

- ▣ Initial Considerations (cont.)
 - Doctrine of Prior Jurisdiction
 - *In re Enlargement and Extension of Mun. Boundaries of City of D'Iberville*, 867 So. 2d 241, 251 (Miss. 2004).
 - “Accordingly, we today declare as antiquated the prior jurisdiction doctrine as it relates to annexation litigation, and to the extent that any of our prior cases have recognized and applied this doctrine, these prior cases are to that limited extent overruled.”

19

MUNICIPAL ANNEXATION Common Considerations

- ▣ Initial Considerations (cont.):
 - School Districts
 - Prior to being repealed by the Mississippi Legislature, *Miss. Code Ann.* § 37-7-611 mandated that when the corporate limits of a municipality constituted a municipal separate school district and the municipality’s boundaries were expanded through annexation, the annexed territory automatically became part of the municipal separate school district. See *Western Line Consolidated School Dist. v. Greenville Mun. Separate School Dist.*, 433 So. 2d 954, 955 (Miss. 1983).
 - Subsequent to *Western Line*, the Mississippi Legislature adopted the Education Reform Act of 1986. See *Greenville Pub. School Dist. v. Western Line Consolidated School Dist.*, 575 So. 2d 956, 958 (Miss. 1990).

20

MUNICIPAL ANNEXATION Common Considerations

- ▣ Initial Considerations (cont.):
 - School Districts (cont.)
 - While not precleared until 1998, Sections 47 and 52 of the Education Reform Act, taken together, completely repealed the procedure for changing municipal separate school district boundaries previously set forth in *Miss. Code Ann.* § 37-7-611. See May 7, 1998 Letter from Anita S. Hodgkiss, Acting Assistant Attorney General and Samuel L. Walters, Esq., http://www.usdoj.gov/crt/voting/sec_5/tr/1_050798.htm.
 - With the repeal of *Miss. Code Ann.* § 37-7-611, a municipal annexation no longer requires a change in school district boundary lines. See *Poole v. City of Pearl*, 908 So. 2d 728, 744 (Miss. 2005); *In re Extension of Boundaries of City of Winona*, 879 So. 2d 966, 992 (Miss. 2004).

21

MUNICIPAL ANNEXATION
Other Considerations and
Annexation Planning Procedure

- ▣ Annexation Study
 - Formal (Written) Annexation Feasibility Study
 - Informal Feasibility Analysis and Annexation Recommendations
- ▣ Annexation Team
 - Attorneys
 - Urban and Regional Planner
 - Engineer
 - Financial Planner or Municipal Finance Consultant
 - Land Surveyor

22

Statutory Requirements
Miss. Code Ann. § 21-1-27, et seq.

- ▣ Ordinance Required to Expand Boundaries (*Miss. Code Ann. § 21-1-27*)
 - When a municipality desires to enlarge its existing boundaries, the governing authorities must first pass an ordinance in accordance with *Miss. Code Ann. § 21-1-27*.
 - *Miss. Code Ann. § 21-1-27* provides that an annexation ordinance shall:
 - ▣ Define with certainty the territory proposed to be included in the corporate limits of the municipality;
 - ▣ Define the entire boundary (i.e. the resultant municipality) as changed by the addition of the annexed territory;
 - ▣ Describe in general terms the proposed improvements to be made in the annexed territory, the manner and extent of such improvements, and the approximate time within which such improvements are to be made; and
 - ▣ State the municipal or public services which the municipality proposes to render in the annexed territory.

23

Statutory Requirements
Miss. Code Ann. § 21-1-27, et seq.

- ▣ *Miss. Code Ann. § 21-1-29*. Petition, Filing, and Contents.
 - After adoption of an annexation ordinance, the municipality must file a petition seeking ratification, confirmation, and approval of its ordinance in the appropriate chancery court.
 - ▣ Generally, the annexation petition shall be filed in the chancery court of the county in which the municipality is located.
 - ▣ "However, when a municipality wishes to annex or extend its boundaries across and into an adjoining county such municipal authorities shall file a petition in the chancery court of the county in which such territory is located." *Miss. Code Ann. § 21-1-29*.

24

Statutory Requirements
Miss. Code Ann. § 21-1-27, *et seq.*

- ▣ *Miss. Code Ann.* § 21-1-29. Petition, Filing, and Contents. (cont.)
 - *Miss. Code Ann.* § 21-1-29 sets forth specific requirements for a valid annexation petition, including the following:
 - The petition shall recite the fact of the adoption of the annexation ordinance and shall pray that the enlargement of the municipal boundaries shall be “ratified, approved, and confirmed” by the court.
 - Shall have attached to the petition, as exhibits thereto, the following:
 - A certified copy of the ordinance adopted by the municipal authorities, and
 - A map or plat of the municipal boundaries as they will exist in the event such enlargement becomes effective.

25

Statutory Requirements
Miss. Code Ann. § 21-1-27, *et seq.*

- ▣ *Miss. Code Ann.* § 21-1-31. Notice of Hearing; Other Municipalities.
 - Upon the filing of the petition required by *Miss. Code Ann.* § 21-1-29, and upon the application of the petitioner, the chancellor shall fix a date certain when a hearing on the petition will be held.
 - Notice is to be given in the same manner and for the same length of time as provided in *Miss. Code Ann.* § 21-1-15, which requires:
 - Notice be given to all persons interested in, affected by, or having objections to the proposed [annexation], that the hearing on the petition will be held on the day fixed by the chancellor and that such persons will have the right to appear and enter their objections, if any, to the proposed [annexation]
 - Notice shall be given by publication in some newspaper published or having general circulation in the territory proposed to be [annexed] once each week for three consecutive weeks
 - Notice shall also be given by posting a copy of such notice in three or more public places in the territory proposed to be annexed
 - The first publication and posted notice shall be made at least thirty (30) days prior to the day fixed for hearing of said petition
 - Such notice shall contain a full description of the territory proposed to be [annexed]

26

Statutory Requirements
Miss. Code Ann. § 21-1-27, *et seq.*

- ▣ *Miss. Code Ann.* § 21-1-31. Notice of Hearing; Other Municipalities. (cont.)
 - In all cases where the territory proposed to be annexed is located within three miles of another existing municipality, then such other municipality shall be made a party defendant to said petition and shall be served with process in the manner provided by law, which process shall be served at least thirty (30) days prior to the date set for the hearing.

27

Statutory Requirements

Miss. Code Ann. § 21-1-27, *et seq.*

- Miss. Code Ann. § 21-1-33. Decree; Burden of Proof.
 - Miss. Code Ann. § 21-1-33 sets forth the annexing municipality's burden of proof and the authority of the chancellor to modify the ultimate area annexed into the petitioner municipality.
 - More specifically, Miss. Code Ann. § 21-1-33 provides that:
 - If the chancellor finds from the evidence that (a) the proposed annexation is reasonable, (b) is required by the public convenience and necessity, and (c) that reasonable public and municipal services will be rendered in the annexed territory within a reasonable time, the chancellor shall enter a decree approving, ratifying and confirming the proposed annexation, and describing the boundaries of the municipality as altered.

28

Statutory Requirements

Miss. Code Ann. § 21-1-27, *et seq.*

- Miss. Code Ann. § 21-1-33. Decree; Burden of Proof. (cont.)
 - In confirming the proposed annexation, the chancellor has the power to modify the proposed annexation by decreasing the territory to be included in the municipality.
 - If the chancellor finds that the annexation is unreasonable and is not required by the public convenience and necessity, then he shall enter a decree denying the proposed annexation.
 - The burden of proof required by Miss. Code Ann. § 21-1-33 is upon the petitioner municipality to show that the proposed annexation is reasonable.

29

Statutory Requirements

Miss. Code Ann. § 21-1-27, *et seq.*

- Miss. Code Ann. § 21-1-33. Decree; Burden of Proof. (cont.)
 - As to finality, Miss. Code Ann. § 21-1-33 provides that, whether the annexation is approved or denied by the chancellor, the decree becomes "effective" after the passage of ten days from the date of the decree or, in the event that an appeal is taken, within ten days from the date of final determination of such appeal.
 - In *City Of Petal v. Gulf South Pipeline Company*, 301 So. 3d 591, 598 (Miss. 2020), the Mississippi Supreme Court ruled that a party aggrieved by a chancellor's final annexation decision has thirty days to file a notice of appeal.
 - * The 2020 *Petal* case clarified the conflict between the ten (10)-day "effective" rule of § 21-1-33 and the 30-day appeal deadline of MRAP 4.

30

Common Law Requirements

- ▣ The Mississippi Supreme Court has, over time, both clarified the statutory requirements set forth under *Miss. Code Ann. § 21-1-27, et seq.*, as well as further developed the standard of “reasonableness” and the means by which reasonableness is measured.

31

Common Law Requirements

▣ Mandatory/Jurisdictional Requirements v. Non-Jurisdictional Requirements

- ▣ *Miss. Code Ann. § 21-1-27*
 - In addressing which portions of the statutory requirements found in *Miss. Code Ann. § 21-1-27* are mandatory and jurisdictional, the Supreme Court has stated that “a fair reading of the annexation statutes, *Miss. R. Civ. P. 15(a)*, *Miss. R. Civ. P. 81(a)(11)*, and our applicable case law leaves no doubt that, in most instances, annexation pleadings are amendable pursuant to *Miss. R. Civ. P. 15*.” See *Extension of the Boundaries of the City of Hattiesburg v. City of Hattiesburg*, 840 So. 2d 69, 80 (Miss. 2003).
 - Specifically, the Court has held that the only requirements of *Miss. Code Ann. § 21-1-27* which are mandatory and must be set forth in the annexation ordinance are those “concerning improvements, public services, and the extent and time within which they are to be made.” *Id.*
 - **Legal Description of Territory to be Annexed**, Errors in the legal description of the territory proposed to be annexed and/or in the legal description of the entire boundary as changed after enlargement/annexation **may be amended pursuant to the Mississippi Rules of Civil Procedure.** *Id.* (emphasis added).

32

Common Law Requirements

▣ Mandatory/Jurisdictional Requirements v. Non-Jurisdictional Requirements (cont.)

- ▣ *Miss. Code Ann. § 21-1-31* {21-1-15}
 - The notice required in annexation litigation is governed by *Miss. Code Ann. § 21-1-31* and *Miss. Code Ann. § 21-1-15* by reference.
 - The Mississippi Supreme Court has held that “the notice required by [21-1-15] is in lieu of personal service and it is well settled that a statute **providing for notice in lieu of personal service must be strictly complied with**” *In re Extension of Boundaries of City of Pearl*, 365 So. 2d 952 (Miss. 1978).
 - Further, the Mississippi Supreme Court has held that “the requirements relative to notice as provided in Section 21-1-15 are mandatory and jurisdictional and in the absence of proper notice, the trial court [is] without jurisdiction” *Norwood v. Extension of Boundaries of City of Itta Bena*, 788 So. 2d 747 (Miss. 2001).

33

Common Law Requirements

- ▣ Public Convenience and Necessity
 - ▣ The determination of the public convenience and necessity of an annexation is a legislative determination to be made by the municipality's governing board. See *City of Jackson v. Town of Flowood*, 331 So. 2d 909 (Miss. 1976). The adoption of an ordinance by a municipality expressing its intent to expand its boundaries is purely a legislative matter and is itself a finding of public convenience and necessity by the governing authorities. *Id.* at 911.
 - ▣ The role of the judiciary in municipal annexations is limited to one question: whether the annexation is reasonable. See *In re Enlarging, Extending, and Defining Corp. Limits of City of Brookhaven*, 957 So. 2d 382 (Miss. 2007).

34

Common Law Requirements

- What is "Reasonable?" – The Twelve *Indicia* of Reasonableness
 - ▣ To guide the determination of reasonableness, the Supreme Court has developed a set of twelve factors or "*indicia*" of reasonableness which are to be considered by the chancellor "under the totality of the circumstances."
 - ▣ In order to carry the burden of proving reasonableness, a municipality must demonstrate, through plans and otherwise, that residents of the annexed area will receive something of value in return for their tax dollars. See *In the Matter of the Enlargement and Extension of the Municipal Boundaries of the City of Madison*, 650 So. 2d 490, 494 (Miss. 1995); *Extension of the Boundaries of the City of Columbus*, 644 So. 2d 1168, 1172 (Miss. 1994).
 - Services and Facilities Plan or Annexation Implementation Plan; and
 - Adoption of the Annexation Plan by the governing authorities of the municipality.

35

Common Law Requirements: The Twelve *Indicia*

- (1) The municipality's need to expand;
 - Spillover development into the proposed annexation area;
 - The city's internal growth;
 - The city's population growth;
 - The city's need for developable land;
 - The need for planning in the annexation area;
 - Increased traffic counts;
 - The need to maintain and expand the city's tax base;
 - Limitations due to geography and surrounding cities;
 - Remaining vacant land within the municipality;
 - Environmental influences;
 - The city's need to exercise control over the proposed annexation area; and
 - Increased new building permit activity.

36

Common Law Requirements: The Twelve *Indicia*

- (2) Whether the area sought to be annexed is reasonably within a path of growth of the city;
- Spillover of urban development into the proposed annexation area;
 - The adjacency of the proposed annexation area to the city;
 - Limited areas available for expansion;
 - Accessibility of the proposed annexation area by city streets;
 - Increased urban development in annexation area;
 - Geography; and
 - Subdivision development.

37

Common Law Requirements: The Twelve *Indicia*

- (3) Potential health hazards from sewage and waste disposal in the annexed areas;
- Potential health hazards from sewage and waste disposal;
 - A large number of septic tanks in the area;
 - Soil conditions which are not conducive to on-site septic systems;
 - Open dumping of garbage; and
 - Standing water and sewage.

38

Common Law Requirements: The Twelve *Indicia*

- (4) The municipality's financial ability to make the improvements and furnish municipal services promised;
- Present financial condition of the municipality;
 - Sales tax revenue history;
 - Recent equipment purchases;
 - The financial plan and department reports proposed for implementing and fiscally carrying out the annexation;
 - Fund balances;
 - The city's bonding capacity; and
 - Expected amount of revenue to be received from taxes in the annexed area.

39

Common Law Requirements:
The Twelve *Indicia*

- (5) The need for zoning and overall planning in the area;
- Incompatible land use within the proposed annexation area;
 - The need for building inspections;
 - The need for building and zoning ordinances;
 - The need for zoning and planning in the proposed annexation area in order to ensure public safety and welfare; and
 - The need for enforcement of zoning ordinances within the proposed annexation area.

40

Common Law Requirements:
The Twelve *Indicia*

- (6) The need for municipal services in the area sought to be annexed;
- Requests for water and sewage services;
 - Plan of the city to provide first response fire protection;
 - Adequacy of existing fire protection;
 - Plan of the city to provide police protection;
 - Plan of the city to provide increased solid waste collection;
 - Use of septic tanks in the proposed annexation area; and
 - Population density.

41

Common Law Requirements:
The Twelve *Indicia*

- (7) Whether natural barriers exist between the city and the proposed annexation area;

Test: The test for evaluation of reasonableness as it relates to natural barriers is as follows:

“It is not a constraint upon development that establishes unreasonableness under the natural barriers concept but rather a condition that makes provision of municipal services impossible or prohibitively expensive.” *Matter of Extension of Boundaries of City of Columbus*, 644 So. 2nd 1168, 1173 (Miss. 1994).

42

Common Law Requirements:
The Twelve *Indicia*

- (8) The past performance and time element involved in the city's provision of services to its present residents;

43

Common Law Requirements:
The Twelve *Indicia*

- (9) The economic or other impact of the annexation upon those who live in or own property in the proposed annexation area;

"We emphasize that fairness to all parties has always been the proper focus of our reasonableness inquiry. Thus, we hold that 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 in showing reasonableness." *Matter of Extension of Boundaries of City of Columbus*, 644 So. 2d at 1172.

"The 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 will probably be experienced by those who live in and own property in the annexation area. The mere fact that residents and land owners will have to start paying city property taxes is not sufficient to show unreasonableness." *In re Matter of the Extension of the Boundaries of the City of Jackson*, 551 So. 2d 861, 867-68 (Miss. 1989).

44

Common Law Requirements:
The Twelve *Indicia*

- (10) The impact of the annexation upon the voting strength of protected minority groups;

45

Common Law Requirements: The Twelve *Indicia*

- (11) Whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and will in the foreseeable future unless annexed (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

46

Common Law Requirements: The Twelve *Indicia*

- (12) Any other factors that may suggest reasonableness.

Examples:

- a) County Seat
- b) Economic Engine
- c) Special Purpose Annexation
- d) Landowner Requested
- e) Highway/Interstate Bypass or Interchange
- f) Commercial Corridors/Industrial Parks

47

Post-Annexation Implementation

- **Effective Date of Municipal Annexation:** *Miss. Code Ann. § 21-1-33* provides the decree of a chancellor becomes effective after the passage of ten days from the date of the decree or, in the event that an appeal is taken, within ten days from the date of final determination of such appeal.
- **Immediate Tasks:**
 - **Forward certified copy of chancellor's decree to secretary of state.**
 - *Miss. Code Ann. § 21-1-39.*
 - If no appeal is filed, the chancery clerk must send a certified copy of the chancellor's decree to the secretary of state's office within ten days of the entry of the chancellor's decree.
 - If an appeal is filed, and the chancellor's decree is affirmed, a certified copy of the chancellor's decree must be forwarded to the secretary of state within ten days of the chancery clerk receiving the Supreme Court's mandate.
 - **Provide a map or plat to chancery clerk.**
 - *Miss. Code Ann. § 21-1-41.*
 - The city must provide a map or plat of the city's boundaries, as altered, to the chancery clerk for recording.

48

Post-Annexation Implementation

- ▣ Immediate Tasks (cont.):
 - Statewide Elections Management Systems Requirements.
 - *Miss. Code Ann. § 23-15-39(9).*
 - Within ten days of the effective date of the annexation, the municipal clerk must provide the county voting registrar with conforming geographic data that is compatible with the Statewide Elections Management System.
 - The data shall be developed by the municipality's use of a standardized format specified by the Statewide Elections Management System.
 - The county registrar shall update the municipal boundary information . . . into the Statewide Elections Management System.
 - The Statewide Elections Management System shall update the voter registration records to include the new municipal electors who have resided within the annexed area for at least thirty (30) days after the annexation and assign the electors to the municipal voting precincts.
 - The county registrar shall forward to the municipal clerk written notification of the additions and changes, and the municipal clerk shall forward to the new municipal electors written notification of the additions and changes.

49

Post-Annexation Implementation

- ▣ Intermediate and Long Range Tasks:
 - Preclearance of the Annexation by the U.S. Department of Justice Is No Longer Required.
 - *Shelby County, Ala. v. Holder*, 133 S. Ct. 2612 (2013)
 - Adopt ordinance redistricting the city.
 - *Miss. Code Ann. § 21-8-7(4)(c)(i)*: The governing authorities of the municipality must adopt an ordinance redistricting the municipality within six months of the effective date of any expansion of a city's municipal boundaries.
 - Preclearance of the Required Redistricting Is No Longer Required.
 - *Shelby County, Ala. v. Holder*, 133 S. Ct. 2612 (2013)

50

Post-Annexation Implementation

- ▣ Intermediate and Long Range Tasks (cont.):
 - Review and revise the city's current budget to include annexation implementation.
 - *Miss. Code Ann. § 21-35-25.*
 - Provides that "the budget of any municipality may be revised as provided in this section and under the conditions herein stated."
 - States that if it affirmatively appears at any time during a fiscal year that anticipated revenues and actual collections from taxes or other sources will exceed estimates, the budget may be revised.
 - If a budget amendment exceeds 10% of the total amount appropriated to a particular department, the amendment must be published or posted within two weeks of the amendment in the manner required for publishing of the original budget.
 - Review and revise zoning ordinances and procedures as they relate to the annexed area.
 - *Miss. Code Ann. § 17-1-17.*
 - Provides that "[z]oning regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified or repealed."
 - Property annexed into a city comes into the city as currently zoned by the county. If the annexed territory is in a county that doesn't have zoning, it comes into the city unzoned.
 - In the case of an annexing municipality, zoning boundaries must obviously be changed in order to bring the new areas of the city under the city's zoning regulations.
 - The statute mandates that the city provide at least fifteen days notice of a hearing on any such amendment, supplement, change, modification or appeal in an official paper of general circulation in the municipality.
 - The notice should also specify a time and place for the hearing.
 - *Miss. Code Ann. § 17-1-15* states that no such plan, ordinance (including zoning boundaries), regulation or program shall become effective until after a public hearing, in relation thereto, at which parties in interest, and citizens, shall have an opportunity to be heard.
 - At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality or county.

51

Post-Annexation Implementation

- ▣ Intermediate and Long Range Tasks (cont.):
 - Review, revise (if necessary), and adopt the city's comprehensive plan as it relates to the annexed area.
 - *Miss. Code Ann. § 17-1-1, et seq.*, provides for the creation of a comprehensive plan and sets forth the statutory requirements for such a plan.
 - *Miss. Code Ann. § 17-1-15* allows the governing authorities of a municipality to provide for a manner in which the plan is amended and provides that no such plan is effective until after a public hearing and that published notice of the hearing is required as set forth therein.
 - Add newly annexed territory to municipal assessment rolls.
 - *Miss. Code Ann. § 21-33-9* sets forth the different methods by which the municipal assessor is allowed to assess taxes on real and personal property in a municipality.
 - Sub-section (a) of the statute allows the municipal authorities to require the municipal assessor to "copy from the county assessment rolls of real and personal property, that portion of the assessment rolls which embraces property, or persons, within the municipality."
 - Sub-section (b) allows the municipal authorities to require a separate assessment to be made by the municipal assessor each year of all taxable personal property along with a yearly or bi-yearly assessment of all taxable real property.
 - Finally, subsection (c) mandates that a municipality located in a county that has completed a countywide reappraisal approved by the state tax commission must adopt the county assessment roll if the municipality is furnished a true copy of the part of the county assessment roll containing property located in the municipality.

52

Post-Annexation Implementation

- ▣ Intermediate and Long Range Tasks (cont.):
 - License businesses in the newly annexed area and collect privilege taxes from these businesses.
 - *Miss. Code Ann. § 27-17-9(1)* requires that "[e]very person desiring to engage in any business, or exercise any privilege hereinafter specified, if such business is located . . . within a municipality, shall apply for, pay for and procure from the tax collector of the municipality, a privilege license authorizing him to engage in the business or exercise the privileges specified therein"
 - Sub-section (2) sets forth the license fees, which are based on the number of people employed by a business.
 - Identify commitments made by the city and institute a plan to fulfill these promises or commitments.
 - In *Ferguson v. Vaiden*, 242 So. 2d 124, 126 (Miss. 1970), the Mississippi Supreme Court stated that when a city files a petition seeking annexation it obligates itself to make the improvements and furnish the services set out in the ordinance.
 - Municipal Services and Improvements set forth in the Annexation Ordinance
 - Commitments regarding departmental personnel and equipment expenditures identified in the municipality's Services and Facilities Plan and/or Annexation Implementation Plan
 - The 1994 Columbus case was the origin of what has evolved into today's Annexation Services & Facilities Plans
 - "[M]unicipalities 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." *Extension of Boundaries of City of Columbus*, 644 So. 2d 1168, 1172 (Miss. 1994).

53

Municipal Zoning Overview

- ▣ Interpretations of Zoning Ordinances
- ▣ Conditional Uses
- ▣ Variances
- ▣ Rezoning

54

Interpretation Review Standard Change

- ▣ *Wheelan v. City of Gautier*, 332 So. 3d 851 (Miss. 2002)
 - Building Official and Planning Commission interpret “main building area” in City ordinance
 - Determine it means entire lot
 - Neighbor brings suit

55

Interpretation Review Standard Change

- ▣ *Wheelan v. City of Gautier*, 332 So. 3d 851 (Miss. 2002) (cont.)
 - Following Chancery Court dismissal, neighbor appeals
 - Court of Appeals – notes traditional deference and “fairly debatable” standard
 - Supreme Court – applies de novo standard; no deference to local government interpretation of zoning ordinance
 - Potential implications – application applies beyond zoning ordinance interpretation context?

56

Conditional Uses

- ▣ Factor intensive
- ▣ *Biloxi v. McDonald*, 395 So. 3d 91 (Miss. 2024) (October 2024 Decision)
 - Conditional use request, short-term rental
 - Circuit court reversed council decision to deny
 - Court Appeals affirmed; Supreme Court affirmed

57

Conditional Uses

- ▣ *Biloxi v. McDonald*, 395 So. 3d 91 (Miss. 2024) (October 2024 Decision) (cont.)
 - “Zoning issues that concern whether to grant or deny a request for a conditional use, or special exception, are adjudicative.”
 - Limited review standard
 - Supreme Court applies “fairly debatable” and “arbitrary and capricious” standard
 - Supreme Court noted – “the only comments that were made against the conditional-use approval were the lay opinion of a neighbor . . . and the opinions of [a] Councilman . . . that lacked any foundation in the record.”

58

Variance Requests

- ▣ “[R]ight to use or to build on land in a way prohibited by strict application of a zoning ordinance.” *Harrison v. City of Batesville*, 73 So. 3d 1145 (Miss. 2011)
 - Substantial evidence review standard
 - Batesville ordinance/code – Board may “vary or modify the application of any of the regulations or provisions of the ordinance where there are *practical difficulties or unnecessary hardships* in the way of carrying out the strict letter of [the] ordinance”
 - Board allowed variance; no findings of fact
 - Supreme Court – “Any evidence presented should be made part of the record, and the Board should provide specific findings of fact and conclusions of law to support any decision”

59

Rezoning

- ▣ Miss. Code Ann. § 17-1-17 provides procedure
- ▣ Substance
- ▣ “[A]pplicant must show by clear and convincing evidence that either (1) there was a mistake in the original zoning or (2) the character of the neighborhood has changed to such an extent to justify rezoning, and a public need exists for rezoning.” *Waring Investments, Inc. v. City of Biloxi* (Miss. Ct. App. 2020)
 - What type of evidence may suffice
 - City Board has discretion in deciding that question

60

Rezoning

- ▣ *Waring Investments, Inc.* (cont.)
 - Applicant presented maps, surveys, aerial photos and expert reports
 - City Council placed greater weight on comments of concerned citizens
 - Court of Appeals – “[T]he members of the City Council were not limited to only Waring’s evidence but were free to consider the statements expressed by all the landowners at the hearing, as well as to call upon their own common knowledge and experience in their town.”

61

Questions?

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62