

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2006-AN-01574**

**IN THE MATTER OF THE ENLARGEMENT  
AND EXTENSION OF THE CORPORATE  
LIMITS OF THE CITY OF MADISON**

**RONALD RUSSELL, KELLY KERSH,  
CHARLES WARWICK, TOM JOHNSON,  
RICHARD DAVIS, HARLAN SISTRUNK,  
and FRANK BELL**

**APPELLANTS-CROSS-APPELLEES**

**V.**

**CITY OF MADISON, MISSISSIPPI**

**APPELLEE-CROSS-APPELLANT**

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**APPEAL FROM THE CHANCERY COURT  
OF MADISON COUNTY, MISSISSIPPI**

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**CONSOLIDATED BRIEF IN SUPPORT OF MOTION BY  
ST. DOMINIC HEALTH SERVICES, INC.  
TO FILE AN AMICUS BRIEF AND PROPOSED AMICUS BRIEF**

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**Oral Argument Requested**

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**Edmund L. Brunini, Jr., Bar No. [REDACTED]  
Brunini, Grantham, Grower & Hewes  
Post Office Drawer 119  
Jackson, MS 39205  
Phone: 601/948-3101  
Fax: 601/960-6902**

**Attorney for St. Dominic Health Services, Inc.\*\***

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**I. GROUNDS FOR FILING**

Pursuant to Rule 29 of the Mississippi Rules of Appellate Procedure, St. Dominic Health Services, Inc. ("St. Dominic") would show unto the Court that it has the following grounds to file an amicus brief in the above-referenced matter.

The City of Madison has appealed Madison County Special Chancellor Jason Floyd Jr.'s decision to exclude a 2.5 square mile area of land from the City of Madison's annexation. St. Dominic was not a named party to the Chancery Court proceedings below, nor is it a party to the appeal or cross-appeal before this Court. However, as the owner of 51.2 acres of land situated in the 2.5 square mile area excluded from Madison's annexation, it has a legitimate interest in the outcome of Madison's cross-appeal. St. Dominic's purpose in filing this Amicus Curiae brief, pursuant to Mississippi Rule of Appellate Procedure 29(a), is to bring to this Court's attention important matters of fact that may otherwise not be revealed to the Court, and to protect its

substantial interests that may be affected by the outcome of the case. St. Dominic's acquisition of the property and its plans for development thereof, including the filing of a Certificate of Need Application for a 75-Bed Hospital, occurred after the trial of this matter and after Chancellor Floyd's decision. As a consequence, these particular facts cannot be cited by other parties herein, nor will they appear in the record before this Court.

## **II. ARGUMENT**

As this Court is aware, the City of Madison has cross-appealed the decision of the Chancellor to exclude from annexation a 2.5 square mile area of land to the north of Madison's current municipal boundaries. St. Dominic, which owns 51.2 acres of property within that parcel of land, requests that this Court allow its property to be annexed by Madison and respectfully asserts that the Chancellor was in error by not approving the 2.5 square miles for annexation.

As specifically stated in the Chancellor's Findings of Fact and Conclusions of Law, the reason for the exclusion of the area of land to the north of the City was "lack of development and access roads." C.P. 677. St. Dominic, as the owner of property in the 2.5 square mile area at issue, informs the Court that there is, indeed, ongoing development in that area. While the acquisition of this property was recent, interest in this site is not new. The construction of Parkway East from Gluckstadt to the northern boundary of the Galleria Parkway and its ultimate connection thereto has been in process for several years prior to the trial of this case. In addition, the proposed Reunion Parkway, Phase III, connecting Bozeman Road west of I-55 to U.S. Highway 51, via a new I-55 interchange called the Reunion Interchange has been in the planning stage for several years and is moving toward the construction stage. These facts clearly demonstrate that development of the entire 2.5-mile area is imminent.

Considering the imminent opening of the entire north-south Parkway from Gluckstadt to Madison transversing the excluded the 2.5 mile-area and the development plans of St. Dominic, the Chancellor's opinion cites facts which are in error. St. Dominic and others very much need the property to be included within the municipal boundaries of Madison. As the Chancellor noted in his Findings of Fact, the City has the ability to provide municipal level services and enforce its strict zoning ordinance and other codes and ordinances throughout the PAA. C.P. 684, 687. The County simply cannot provide such services and enforcement. The areas of the proposed annexation area ("PAA") that will receive the most benefit from the City's services, zoning and codes are those that are currently in the process of being developed, such as the St. Dominic property. As St. Dominic's property and the property surrounding it begin to develop, Madison will be able to take part in the overall planning, zoning and code enforcement of the area, which will ensure the health, safety and welfare of the general public. For the benefit of the residents and property owners of the PAA as well as the current residents of the City, Madison should have the opportunity to exert control over the developments along its periphery by enforcing its own codes and ordinances.

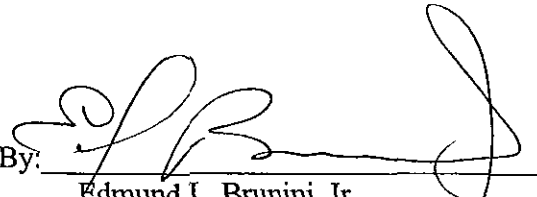
Therefore, St. Dominic adopts in full the City of Madison Cross-Appeal and its Brief on Appeal and Cross-Appeal.

### **III. CONCLUSION**

As the facts set out in this brief have indicated, the decision of the Chancellor as to the area excluded from annexation was in error. Contrary to the Chancellor's findings, the 2.5 square mile area, including the property owned by St. Dominic, is in the process of being developed. The area is in need of municipal level services, ordinances and zoning. For these reasons, St. Dominic respectfully requests that this Court accept this Amicus Brief and reverse the decision of the

Chancellor with respect to the 2.5 square mile area excluded from the City of Madison's annexation.

Respectfully submitted this the 21 day of June, 2007.

By:   
Edmund L. Brunini, Jr.

OF COUNSEL:

Edmund L. Brunini, Jr., Bar No. [REDACTED]  
Brunini, Grantham, Grower & Hewes  
Post Office Drawer 119  
Jackson, MS 39205  
Phone: 601/948-3101  
Fax: 601/960-6902

**CERTIFICATE OF SERVICE**

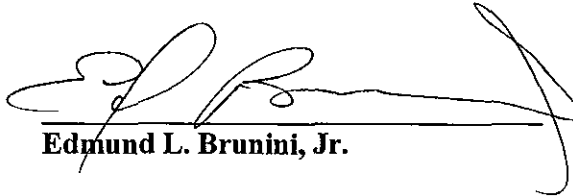
I, the undersigned one of the attorneys for Amicus, do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the foregoing Motion to:

**Honorable Jason Floyd, Jr.**  
**Special Chancery Judge for District 11**  
**204 Tate Street**  
**Senatobia, MS 38668**

**T. Jackson Lyons**  
**T. Jackson Lyons & Assoc.**  
**120 N. Congress St., Suite 420**  
**Jackson, MS 39201**

**James L. Carroll**  
**Carroll Warren & Parker, PLLC**  
**P. O. Box 1005**  
**Jackson, MS 39215-1005**

THIS the 21 day of June, 2007.

  
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**Edmund L. Brunini, Jr.**