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# MSCA news

VOLUME 21, NUMBER 3

MARCH 2007

## CLEAN WATER ACT AND SHOPPING CENTER DEVELOPMENT

*Feature*

by Peter Berrie, Faegre & Benson LLP

While “total maximum daily loads” and “discharge elimination systems” might not sound pleasant, one would not think that they could prevent the development of new shopping centers in Minnesota. But they might.

In August 2005, because of an issue with total maximum daily loads (or TMDLs), the Minnesota Court of Appeals found that the Minnesota Pollution Control Agency had wrongly issued a permit allowing Annandale and Maple Lake to build a joint wastewater treatment facility. Proposed residential and

retail developments in this area were immediately stalled.

In response to the case, the Minnesota Pollution Control Agency no longer allows any additional discharges of pollutants that would impair any body of water on its “impaired waters” list. This could delay development throughout Minnesota, but especially in our fastest growing areas. In Minnesota, we have over 1,500 bodies of water that are classified as “impaired” for purposes of the federal Clean Water Act. Just as importantly, if not more so,

*Clean Water Act on page 2*

## CARSON STREET STATION

*Snapshot*

**Location:** Southwest corner of Highway 169 & Main Street, Elk River

**Month/Year Opened:** Construction will be complete 2/28/07

**Owner:** Elk River 2006, LLC

**Managing Agent:** H.J. Development, Inc.

**Center Manager:** Angela Hanson

**Leasing Agent:** Chris Moe, H.J. Development, Inc., (952) 476-9400, cmoe@hjdevelopment.com

**Architect:** Pope Associates & Architectural Design Group, Inc.

**Construction Contractor:** Benson-Orth Associates

**GLA:** 24,393 sf

**Current Occupancy:** 50.35%

**Number of Stores:** Approximately 14

**Current Tenants:** Verizon Wireless, Supercuts,



Chipotle, Jimmy John's, FedEx Kinko's & Caribou Coffee

**Market Area Served:** Northwest

**Construction Style:** Upscale retail development, new construction

**Additional Facts/Narrative:** Carson Street Station is an upscale, retail development consisting of approximately 25,000 sf in two buildings. Positioned on a premier piece of property, the development offers excellent visibility and access. In addition, Carson Street Station shares an entrance with retail neighbors M&I Bank and Walgreens. Other area tenants include Home Depot, Wal-Mart Supercenter, Target, Cub Foods and Menards.

## CLEAN WATER ACT *continued*

### Lake Pepin's Major Watersheds



Source: Minnesota Pollution Control Agency

one of these impaired waters is Lake Pepin. According to the PCA, the Lake Pepin watershed covers nearly 50% of Minnesota and contains about 60% of Minnesota's wastewater treatments facilities. (See the map showing the three major river basins that comprise the Lake Pepin watershed).

This article will briefly explain the federal Clean Water Act, the Annandale/Maple Lake case, and, finally, state legislative attempts to help solve the problem.

### Clean Water Act

The federal Clean Water Act requires each state to establish water quality standards for all bodies of water within the state. These standards can be different for each body of water depending on its intended use (for example, standards for a lake intended for swimming and drinking would be much different than standards for a lake that was only used for irrigation or industrial uses).

When the Clean Water Act was first established in the early 1970s, the easiest way to clean-up our waters was to regulate the "point sources." Point sources include municipal and industrial plants that discharge directly into rivers and streams, such as wastewater treatment facilities. Under the Clean Water Act, every "point source" needs a NPDES permit (National Pollution Discharge Elimination System) to discharge a pollutant. Surprisingly to many, the definition of "point source" is fairly broad. One court found that construction sites, because of their inordinate amount of runoff, can be point sources requiring NPDES permits. On the other hand, somewhat comfortingly, shopping centers have been found not to be point sources.

Fairly quickly, the benefits to be gained by regulating point sources were nearly maximized. But non-point sources of pollution—such as pollution from agricultural and residential runoff of pesticides and herbicides, feedlot runoff, leachate from septic systems, highway de-icing, etc.—were not controlled by the NPDES permitting system, yet they significantly contributed to the impairment of all waters.

Accordingly, the federal Environmental Protection Agency implemented the Clean Water Act's requirements that each state adopt "total maximum daily loads" or TMDLs to establish the maximum amount of each pollutant that a body of water can receive and still meet the designated water quality standards. The TMDLs would need to address pollutants from both point and non-point sources.

### Annandale and Maple Lakes Court Decision

As mentioned above, in 2005, the Minnesota Court of Appeals overturned the PCA's decision to grant a NPDES permit allowing the cities of Annandale and Maple Lakes to construct a joint wastewater treatment plant. Because the wastewater treatment plant could not be built, proposed developments in this high-growth area have been stalled. According to Steve Bona of Heritage Development, not only does this decision directly prevent some new developments, but it has had a ripple effect by scaring away potential retailers in the area because of the uncertainty as to the number of residential "rooftops" that will be built.

The proposed Annandale and Maple Lakes wastewater treatment plant would have discharged an additional 2,200 pounds of phosphorous per year into Mud Lake, which flows eventually into Lake Pepin. (Phosphorous is a pollutant that promotes algae blooms, which interfere with recreational activities and reduce oxygen levels enough to endanger fish.). The PCA had granted the permit because the 2,200 pound increase would be more than offset by a 53,500 pound reduction in phosphorous discharge resulting from a new wastewater treatment plant in Litchfield.

The court ruled that the Clean Water Act and applicable EPA regulations require states to identify waters that do not meet

water quality standards (the "impaired waters" list), and then create TMDLs to set the maximum amount of the applicable pollutant permitted in that water. Lake Pepin is on the impaired waters list for phosphorus, but the PCA had not—and still has not—created TMDLs for Lake Pepin. (The court stated that the PCA expects to have a TMDL for Lake Pepin no earlier than 2009.) Because no TMDL had been set, no NPDES permit could be issued for a new source that would "contribute to the violation of water standards." Applying the facts at hand, because the PCA had already determined that the additional 2,200 pounds of phosphorous would eventually "contribute" to the impaired status of Lake Pepin, the court ruled that no permit could be issued.

This 2005 court decision has been appealed and the Minnesota Supreme Court should rule sometime during 2007.

### Legislative Proposal

Because the existing situation could stifle growth and development throughout the state, during the last two legislative sessions, Governor Pawlenty joined with a coalition of environmental, business and farm groups to support the Clean Water Legacy Act, which would have raised approximately \$80 million to clean up polluted waters. But the legislation never passed because of concerns in the House regarding how to pay for the additional funding. This year's proposal to dedicate funding to clean our waters might be in jeopardy already. According to a recent column in the Star Tribune by Dennis Anderson, Senate and House leaders (all from the metro area) want to tie funding for water pollution remediation to a proposal to amend the state constitution to dedicate funding for conservation purposes for the arts and public radio and television. While this proposal could be popular in the metro area, it may face serious opposition in non-metro areas, even though there is widespread support for finding additional funds to clean up our state's waters. Please contact your state senator and representative to express the importance of cleaning our state waters. Besides the inherent importance of clean waters for drinking, fishing and other recreational purposes, removing this impediment to development depends on it. ■

## RETAIL TRENDS: FRANCHISE LEASING OPPORTUNITIES

# Program Recap

by Eric Beazley, Loucks Associates

**Who:** John Hamburger  
Franchise Times Magazine

**What:** Everything you Want to Know About Franchising

**When:** Wednesday, February 7

**Where:** Doubletree Hotel Minneapolis Park Place

**Synopsis:** John Hamburger was recently featured in Reader's Digest for people who have names similar to the industry in which they work. Ironically, John was teased as a kid for having the name "Hamburger," but has since dedicated a large portion of his career to the restaurant business. As the founder and president of Franchise Times magazine, Mr. Hamburger also publishes the Restaurant Finance Monitor and the Foodservice News.

The word "franchise" stems from the French



**February presenters:**

John Hamburger, *Franchise Times Corporation*  
Barry Brottlund, *InSite Commercial Real Estate, Inc.*

word "franche," which means "free of servitude" or "controlling your own destiny". With regards to franchising, people can begin to control their destiny by starting/owning their own business. Franchising offers viable business ownership opportunities to many people where opportunities would otherwise not

*Program Recap on page 5*

## "LEEDING" WITH SIMPLE STRATEGIES

by Natina James, KKE Architects, Inc.

Is climate change affecting construction strategies? Are Leadership in Energy and Environmental Design (LEED) and other Green Construction Strategies fads or imperative realities?

In the United States, developers have simply avoided this because "U.S. development and financing models place more importance on initial construction costs than lifetime operating costs." But what if you could implement some simple strategies while keeping additional costs to a minimum? Could you actually increase your rent psf by offering a more efficient sustainable building? These are questions we are all facing today, as energy and construction costs continue to escalate.

Wal-Mart takes leadership by implementing goals to reduce energy use and greenhouse gas emissions by 30% and reducing waste by 25%. Their green corporate initiatives have payback within three years or less. The U.S. General Services Administration (GSA) builds every building with a goal of achieving Silver status on their LEED green building certification, and their increases in cost have consistently been less than 10%. Simple design strategies include

optimizing site potential, minimizing non-renewable energy consumption, using environmentally preferable products, protecting and conserving water; enhancing indoor environmental quality, and optimizing operation and maintenance practices.<sup>2</sup>

How can the average project start making a difference? Simple solutions include installation of waterless urinals or smart refrigeration units (which temper use during peak demands), utilizing daylight, solar and wind potentials, utilizing efficient lamps that do not create heat, white reflective roofs and recycling. Retail tenants and developers tend to react to retail shoppers' expectations and demands. The time is approaching where shoppers and tenants will expect sustainability in retail projects. "Retail and the rest of commercial real estate needs to continue to push harder for green. It keeps expenses down, it's good business, and, more importantly, it's the right thing to do."<sup>3</sup>

<sup>1</sup> Making Sustainable Development Profitable – Shopping Centers Today, February 2007

<sup>2</sup> [www.GSA.gov](http://www.GSA.gov) - Sustainable Design Program

<sup>3</sup> Making Sustainable Development Profitable – Shopping Centers Today, February 2007



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## MINNESOTA

# Marketplace

*Press releases are printed based upon availability of space and relevance to the local market.*

- **General Growth Properties** is breaking the traditional norms of shopping mall hours by becoming the first national mall owner to adjust its regular opening and closing hours. All General Growth malls will open at 8 a.m. every Saturday and stay open a half-hour later, until 10 p.m., on Fridays and Saturdays.
- **Supervalu** is testing loyalty cards that give customers targeted coupons based on their buying history. The program, called Avenue, is now in place in more than 300 stores in California and Chicago and could roll out to more stores in 2007.
- **Christo's** has announced it is going into the former Sidney's on Highway 7 in Minnetonka.
- Reflecting an increasing inventory of showroom samples, Scratch N' Dent Furniture in St. Louis Park said it has changed its name to **Odds & Ends Furniture Gallery**.
- **Trader Joe's** will be opening its second location in March in Maple Grove.
- **Upland Real Estate Group, Inc.** announced the sale of a Denny's Restaurant in Brooklyn Center. The investment sales transaction totaled over \$2,000,000 and was completed in early 2006.
- **Let's Dish!** International, Inc. announced it has signed an agreement with Graymann, Inc. to franchise a Let's Dish! retail meal preparation store in Rochester. This agreement is the latest step in the company's national expansion plans.
- **Shingobee Builders** has begun construction of a new Courtyard by Marriott Hotel in the Fountains of Arbor Lakes development in Maple Grove. Completion of the Courtyard by Marriott is scheduled for December 2007.
- **Architectural Consortium LLC** recently completed the new freestanding 7,000 sf Lonsdale Municipal Liquor store for the city of Lonsdale. AAMCON Construction was the General Contractor.
- The Galleria shopping center space formerly occupied by Sidney's restaurant in Edina, is now home to **Crave**, a new restaurant concept developed by Kaskaid Enterprises. Kaskaid worked with Minneapolis-based marketing and design firm, Shea, Inc., on design of the space. The restaurant opened to the public on Friday, February 9.
- **Snap Fitness** is opening a new location in Jefferson Plaza, located at 85<sup>th</sup> and Jefferson Highway in Brooklyn Park.
- **Fitness 19** has executed leases in Brooklyn Park for Park Place Promenade and Eden Prairie, Minnesota. There are three current locations in Coon Rapids, Riverdale Crossing Shopping Center; Lakeville, Kenrick Commons Shopping Center; and Shorewood, Shorewood Village.

## WELCOME

# New Members

- Matt Halberg**, Collateral Real Estate Capital, LLC  
**David Carland**, Stonehenge USA  
**Sue McDougall**, Master: Engineering, Real Estate & Construction  
**Matt McGinn**, BLI Lighting Specialists  
**Marc Bullis**, Bullis Insurance  
**Bryan Schafer**, City of Blaine  
**Jim Ottenstein**, Stonehenge USA  
**Dan Regan**, Airlake Development, Inc.  
**Michael Benson**, Wallingford Properties Company  
**Kathy Bayliss**, Wellington Management, Inc.  
**Shawn Kaye**, City of Blaine  
**Lori Johnson**, City of Blaine  
**Alan Dale**, Stonehenge USA  
**Robin K. Johnson**, RE/MAX Commercial Group
- Nikki O'Byrne**, Reliance Development Company  
**John Richardson**, LaSalle Bank  
**Patricia Weller**, Krass Monroe, P.A.  
**Robert Fenlon**, Leonard, Street and Deinard  
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**Josh Cooner**, Stewart Title Guaranty Company – National Title Services  
**Robin Solberg**, Kraus-Anderson Companies  
**Tom Nordin**, General Growth Properties, Inc.  
**Dale Peterson**, Bank of the West  
**Roger Halverson**, Matrix Resourcing  
**Eileen Engels**, Verizon Wireless  
**Melissa Henry**, General Growth Properties, Inc.

## MARCH

# Member News

*Press releases are printed based upon availability of space and relevance to the local market.*

## Stahl Construction Nominated Contractor of the Year

In January, Stahl Construction was nominated for the 2006 General Contractor of the Year T.O.P.S. Award in the under \$150 million category by the American Subcontractors Association of Minnesota (ASA).

## Schmidt Resigns from MSCA

Missy Schmidt has tendered her resignation from the MSCA Board of Directors effective immediately. Missy has left Leeann Chin, Inc. and accepted a new position with The Oceanaire, Inc. We thank Missy for her service and dedication to our organization, and wish her the very best in her new position.

## FEBRUARY

# Professional Showcase

### Minneapolis/St. Paul Business Journal

The *Minneapolis/St. Paul Business Journal* is the only business publication reporting exclusive news, research, and information on local companies in 20 key industries. Published every week in print, throughout the day on the Web and at 3:00 p.m. daily through e-mail alerts, the *Business Journal* is the one resource you wouldn't want to be in business without.

## PROGRAM RECAP *continued*

exist because of large capital requirements, barriers to entry, lack of market knowledge, etc.

Franchising is regulated in only 15 states within the United States. If a business desires to offer franchising opportunities within one of the regulated states it is required to develop a Uniform Franchise Offering Circular or UFOC. The UFOC includes information about the business such as financial statements and contact information for all past and present franchisees. In this way potential franchisees have a good start to completing their due diligence on the franchise.

While there are the commonly known franchises such as McDonald's or Subway, there are also hundreds of less-known opportunities. A few less known franchises include:

- Pet Pee Pee – a household cleaning service
- Mr. Sparky – an electrician franchise
- Geese Police – geese eradication services
- Pop a Lock – locksmith services
- Pizza Patron – caters to the Hispanic market

One of John's favorite franchises is Rent a Husband, which offers services for minor household repairs. Locally, Caribou Coffee is just starting to offer franchising opportunities, and the less-known Chanticlear Pizza has 20 stores across the Twin Cities.

Finally, John noted that the Federal Small Business Administration is very active in franchising, and currently there is a lot of capital available for franchisees. Corporate downsizing is also contributing to strengthening franchising, as older corporate employees (who have capital) are looking to own their own businesses. ■

## MSCA'S MARKETING AND COMMUNICATIONS COMMITTEE SHIFTS GEARS

We'd like to let you know that we have made a change affecting our Marketing and Communications Committee. With the ever-changing needs of the association, we feel that this Committee has served their purpose and will no longer exist at this point in time. We'd like to thank the 2007 co-chairs, Matthew Mock (Braden Construction, Inc.) and Stephanie Dean (Stahl Construction Company) and in addition, to anyone else who has served on the Marketing and Communications Committee, for their service and dedication. This change will allow for more opportunities to serve on other committees.

## TECHNOLOGY



Do you know someone that might benefit from becoming an MSCA member? We have a short Member Referral form available on our Website. You can go to the MSCA home page under "resources", click on "referrals", complete the short form and click on submit. Your referral could turn into not only a new member, but also a valuable contact for someone in the organization! For questions, please contact Cindy MacDonald at (952) 948-9408.

## MSCA Member Profiles

### TANYA SPAULDING



**Company:** Shea, Inc.

**Primary Career Focus:** Client Services, Strategy and Business Planning, New Business Development within a marketing and design-focused firm

**Education:** University of St. Thomas; degree in Journalism, English, Speech

**Hobbies:** Anything athletic: cycling, running, kayaking, etc. And travel. Lots and lots of travel!

**Dream Job:** Finally writing/publishing that book I've been crafting in my head

**Favorite Food:** Travel and work has me eating at a lot of restaurants and my favorite "food" is variety - I like to try it all!

### CINDY MACDONALD



**Company:** Kraus-Anderson Realty Company

**Primary Career Focus:** Property Management

**Family:** Husband - Sam, Children – Lindsey (15), Alexander (12), and our Golden Retriever Franky (1)

**Dream Job:** Songwriter

**Favorite Food:** Spinach and artichoke dip

**MSCA Involvement:** Member since 1985, prior involvement - Community Enhancement Committee, Sponsorship Committee and past Director; Current involvement - Technology Committee and 2nd Vice President

## 2007

## Events Schedule

Our monthly program meeting date is the first Wednesday of every month. All meetings will be held at 8:00 a.m. (registration at 7:30 a.m.) at the Sheraton Bloomington Hotel unless otherwise noted or publicized before the program. Program topics and location are subject to change.

**Wednesday, March 7** – Shopping Center/Mall Focus

**Wednesday, March 14** – Business Day at the Capitol, *Crowne Plaza Hotel*

**Wednesday, April 4** – Development, *Doubletree Hotel Minneapolis Park Place*

**Wednesday, May 2** – Retailer Focus (*afternoon program*)

**Wednesday, June 6** – Demographics

The Minnesota Legislative Session began on January 3, 2007. This is the first year of the biennial session when the Governor and Legislature will set the budget for the next two fiscal years. DFL majorities control both the House and Senate and have begun introducing bills reflecting their priorities.

The Governor has presented his budget. As this newsletter goes to press, the final

budget forecast is scheduled to be announced in late February and the Legislature will begin the budget-setting process in earnest.

MSCA can expect increased legislative activity this year regarding issues important to the shopping center industry. Changes to the statewide business property tax, gift card restrictions, health care reforms, transportation funding, land use

legislation, and impact fees will most likely be part of the DFL legislative agenda. Working with the Legislative Committee, Faegre & Benson will keep MSCA members apprised of legislative developments important to the industry and advocate on behalf of MSCA. Members of MSCA are encouraged to join us for Business Day at the Capitol on March 14th.

## GOOD READS

## Bookmark

### Quickpicks – Amazon’s List of ICSC Publications, by Date:

1. *U.S. Shopping Centers of Interest: The Traveler’s Guide* – November 30, 2006
2. *Global Retailing* – October 30, 2006
3. *Winning Shopping Center Designs: 29th International Design and Development Awards* – May 30, 2006
4. *Winning Shopping Center Designs: 28th International Design and Development Awards* – May 30, 2005
5. *Leisure & Lifestyle Retailing* – May 30, 2005
6. *Market Research for Shopping Centers* – January 31, 2005
7. *Shopping Center Security: Perception and Reality* – January 2005
8. *Winning Shopping Center Designs, No. 10* – November 2, 2004
9. *Office Worker Retail Spending Patterns: A Downtown and Suburban Area Study* – January 2004
10. *Shopping Center Specialty Leasing* – January 2004

Contact Deb Carlson at [dcarlson@northstarparkers.net](mailto:dcarlson@northstarparkers.net) or Christopher Naumann at [cnaumann@kke.com](mailto:cnaumann@kke.com) with your reading recommendation.

## FEATURED CORPORATE SPONSORS COMPANY VISIONS

## Thank You

### American Engineering Testing, Inc.

To be the engineering partner of choice when it comes to soils, foundations, environmental issues, construction materials testing, and forensic evaluations of existing buildings.

### Brookfield Properties Corporation

To be a leader in the North American commercial real estate industry.

### The Collyard Group L.L.C.

To perpetuate the equation that Competency plus Performance equals the success of Client and Company.

### Gray Plant Mooty

To be a law firm that blends traditional quality and values with contemporary

thinking. We believe in the attorney as counselor and innovator. We build successful relationships on quality service, personal relationships, trust and confidence.

### KKE Architects, Inc.

“Expanding the Vision” is our culture and an attitude. It’s thriving on thinking that combines opportunity with imagination then expands it exponentially to accomplish more than anyone thought possible.

### Northstar Partners

Northstar Partners/Cushman & Wakefield is committed to delivering integrated resolutions to investment and corporate clients both locally and globally. Our collaborative culture is one of teamwork, which directly supports this vision.

## Web Sites

Reduce surface runoff! Helpful sites in creating raingardens for private residences and business property:

- [www.rainscapes.org](http://www.rainscapes.org)
- <http://dnr.wi.gov/org/water/wm/nps/rg/index.htm>
- [www.raingardennetwork.com/](http://www.raingardennetwork.com/)

## PROPERTY TAXES DESERVE A CLOSER LOOK

### Are you paying more than your fair share?

Let Fredrikson & Byron’s property tax lawyers take a closer look.

Judy Engel ..... 612.492.7118  
Thomas Wilhelmy ... 612.492.7058

**Fredrikson**  
& BYRON, P.A.

by **Sara Stafford**, LandAmerica Commercial Services

**S**ince I heard mixed-reviews about this “Grown-Up Chuck E. Cheese,” I had to check it out myself.

In the late 70’s in Little Rock, Arkansas, two establishments existed side by side in location, but worlds apart in concept. Situated in the classic old setting of the Missouri Pacific Train Station, “Buster’s” restaurant was a favorite watering hole offering one of the most eclectic menus in town. Next door, Dave ran a place called “Slick Willy’s World of Entertainment” offering outrageous fun and games with a limited food menu. They soon discovered they had a unique traffic phenomenon. Patrons would often be seen going from one business to the other. What would happen if they put both establishments under one roof? In 1982 the two collaborated and started Dave & Buster’s out of a 40,000 sf warehouse located at the end of “Restaurant Row” in Dallas, Texas.

Dave & Buster’s has quickly grown into a national phenomenon, with over 45 locations throughout the United States and abroad. Last October, Minnesota’s first Dave & Buster’s opened in Maple Grove on Fountains Way. This 32,000 sf building can be seen as you exit off Hemlock Lane and 94. This massive brick and stucco building, in a sea of parking, is accented with colorful blue and orange awnings.

Upon entry, a very large bar separates the dining room area from the entertainment side. We sat on the dining side complete with numerous mirrors, colored light fixtures, no booths and poor acoustics. The food menu was large but not as extensive as their beverage menu. We gave the tortilla soup a 6 out of 10, but the quesadilla only earned a 5.

I “followed the yellow brick road” while strolling through the casino-like Million

Dollar Midway and past Wheel of Fortune to discover that the restrooms resemble gym locker rooms from an elementary school. The entertainment options were endless and if more time allowed, Skeet Ball would have lured me in. Their unique entertainment options including charging up Power Cards for play in the Million Dollar Midway, having a dinner event like a Mystery Dinner Theatre or Team Building events such as a Company Challenge.

We didn’t choose the Eat and Play Power Combo for \$15.99 but heard that the prices vary according to the time of day, so beware.

If sensory overload is your passion or distracting your children for several hours is your intent...the entertainment side of Dave & Buster’s is for you. ■



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**Business Day at the  
Capitol is March 14th**

Minnesota Shopping Center Association  
8120 Penn Avenue South, Suite 114  
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