

STATE OF VERMONT

ENVIRONMENTAL COURT  
Docket No.

Land Use Panel of the  
Natural Resources Board,  
Petitioner,

ASSURANCE OF DISCONTINUANCE

v.

J. Richard and Linda J. Corley Trust Fund #1 and  
Bowl New England, Inc., Respondents

### VIOLATION

Violation of Land Use Permit #4C0288 series and Act 250 Rule 34

### ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and J. Richard and Linda J. Corley Trust Fund #1 and Bowl New England, Inc., (Respondents) hereby enter into this Assurance of Discontinuance (Assurance), and stipulate and agree as follows:

### STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. On May 16, 1978, the District 4 Environmental Commission issued Land Use Permit 4C0288-1 to J. Richard Corley, Respondents' predecessor in title. The Permit authorized the permittee "to construct a 16,500 sq. ft. building to be used as a bowling alley in the Ray Pecor Industrial Park, Colchester, Vermont."
2. On October 5, 1979, the District 4 Environmental Commission issued Land Use Permit 4C0288-2 to J. Richard Corley. The Permit authorizes the permittee "to construct a 6,000 square foot addition to the existing Yankee Lanes Bowling Center as approved in Land Use Permit 4C0288-1 for the purpose of adding eight lanes and office space."
3. Condition 1 of Land Use Permit 4C0288-2 reads in pertinent part: "No changes shall be made in the project without the written approval of the District Environmental Commission."
4. Some time prior to October 31, 2008, Respondents constructed changes to the project, including the installation of signs, the addition of exterior lighting and the expansion and renovation of the existing restaurant. On October 31, 2008,

Respondents filed an application with the District Commission, seeking approval of these as-built changes.

5. On March 16, 2009, the District Commission issued Land Use Permit 4C0288-2D to the Respondents. The permit "specifically authorizes the Permittees to make after-the-fact façade changes, install three internally illuminated signs, add exterior lights and renovate the interior to create a larger restaurant with 116 (50 more) seats at Yankee Lanes on Lower Mountain View Drive in the town of Colchester, Vermont."

6. In the Findings of Fact and Conclusions of Law that accompanied Land Use Permit 4C0288-2D, the Commission noted that jurisdiction over the after-the-fact changes approved by the permit "attaches because the project involves a material change to a development over which the Commission has jurisdiction, and thus constitutes "development" pursuant to 10 V.S.A. §6081. Accordingly, a land use permit amendment is required pursuant to Act 250 Rule 34."

7. No appeal was taken from the issuance of Land Use Permit 4C0288-2D, and it is therefore final.

8. By constructing the alterations approved by Land Use Permit 4C0288-2D before the issuance of the said Permit, Respondents violated Land Use Permit #4C0288-2 and Act 250 Rule 34.

### **AGREEMENT**

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

- A. Respondents shall comply with Land Use Permit series 4C0288.
- B. Within thirty (30) days of the date that the Environmental Court enters this Assurance as a judicial order, Respondents shall pay to the State of Vermont, pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of Seven Thousand Five Hundred (\$7500.00 US) Dollars for the violations noted herein. Payment shall be by check made payable to the "Treasurer, State of Vermont," which shall be sent to:

Denise Wheeler, Business Manager  
Land Use Panel of the Natural Resources Board  
National Life Records Center Building  
National Life Drive  
Montpelier, Vermont 05620-3201

Assurance of Discontinuance

*Land Use Panel, Natural Resources Board v. J. Richard and Linda J. Corley Trust  
Fund #1 and Bowl New England, Inc.*

Page 3 of 5

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Any payment by Respondents pursuant to this paragraph is made to resolve the violations set forth in this Assurance and shall not be considered to be a charitable contribution, business expense, or other deductible expense under the federal or state tax codes. Respondents shall not deduct, nor attempt to deduct, any payments, penalties, contributions or other expenditures required by this Assurance from Respondents' state or federal taxes.

- C. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.
- D. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with all other applicable state or local statutes, regulations or directives applicable to the Respondents.
- E. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Environmental Court. When so entered by the Environmental Court, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- F. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts described herein and about which the Land Use Panel has notice on the date the Court signs this Assurance, provided that the Respondents fully comply with the agreements set forth above.
- G. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Environmental Court. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- H. Any violation of any agreement set forth herein will be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- I. This Assurance is subject to the provisions of 10 V.S.A. ' 8007.

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. J. Richard and Linda J. Corley Trust  
Fund #1 and Bowl New England, Inc.

Page 4 of 5

**SIGNATURES**

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. I have the authority to sign this Assurance of Discontinuance on behalf of the J. Richard and Linda J. Corley Trust Fund #1.

Dated at Colchester, VT, this 1<sup>st</sup> day of September, 2009.

Dawn A. Belton, Trustee  
for the J. Richard and Linda J. Corley  
Trust Fund #1

STATE OF Vermont  
COUNTY OF Chittenden, ss.

BE IT REMEMBERED, that on the 1 day of September, 2009,  
personally appeared Susan M. Belton, signer of the foregoing instrument who  
is/are known to me or who satisfactorily established his/her identity to me and  
acknowledged the same to be his/her free act and deed and that he/she has the  
authority to execute this Assurance of Discontinuance on behalf of the J. Richard and  
Linda J. Corley Trust Fund #1.

Before me,

Bernadette Bouchard  
Notary Public  
My Commission Expires: 2/10/11

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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. I have the authority to sign this Assurance of Discontinuance on behalf of Bowl New England, Inc.

Dated at Colchester, VT, this 1<sup>st</sup> day of September, 2009.

[Signature]  
for Bowl New England, Inc.

Assurance of Discontinuance

Land Use Panel, Natural Resources Board v. J. Richard and Linda J. Corley Trust  
Fund #1 and Bowl New England, Inc.

Page 5 of 5

STATE OF Vermont  
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 1 day of September, 2009,  
personally appeared J.R. Corley, signer of the foregoing instrument who  
is/are known to me or who satisfactorily established his/her identity to me and  
acknowledged the same to be his/her free act and deed and that he/she has the  
authority to execute this Assurance of Discontinuance on behalf of Bowl New England,  
Inc.

Before me,

Bernadette Besutti Boucher  
Notary Public  
My Commission Expires: 2/10/11

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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and  
accepted.

Dated in Montpelier, Vermont, this 3rd day of September, 2009.

LAND USE PANEL

By:

Peter F. Young, Jr., Esq.  
Chair