

August 4, 2016 continuation of the July 13, 2016 Administrative Appeal by Steven Mclean of the Limerick Planning Boards decision to deny a conditional use permit for a Santa's Workshop/Gift Shop.

Members Present;

Kimberly Oliver Co-Chairman
David Coleman
Kathy Ward
Steven Mclean-Appellant: recused

Members Absent:

Michael Carroll- Chairman

Public Present:

Brian Saulnier
Dottie Richard
Ronald Phinney-CEO
Barbara Fifield
John Medici
Steven Malmude
Sean Carroll

Kimberly Oliver welcomed everyone to the August 4, 2016 meeting and asked everyone to stand to say the pledge of Allegiance. She offered condolences to the Carroll family for the loss of Frank Carroll Sr.

She summarized process from the application from Steven Mclean for a Santa Claus Gift Shop. She recapped on the Appeals Boards obligation to have a De Novo hearing. She explained that it was the first one the Appeals Board had done and had many questions to which they contacted the town's attorney for guidance. One question that was asked of the town's attorney was if they had to use the Planning Boards application and proceed a certain way. The town's attorney stated that the Appeals Board could use their own application and they would need to follow the Town of Limerick's Zoning Ordinance and Conditional Use Ordinance with the 16 conditions. She continued that the public hearing on July 13, 2016 was recessed so the Appeals Board could do a site walk and will re-open the public hearing at this meeting. She explained that the town's attorney advised them that they needed to notify the abutters and even though it was not done for the first meeting, the abutters were notified about this meeting and covers all the requirements for this meeting. She went on to say that she would open this meeting up to abutters that were present or any other person that would like to speak. They would then proceed with the 16 conditions to decide as a board if the conditions have been met. With no comments or questions from the board member she opened

the public hearing and asked if anyone would like to provide any information regarding this application.

An abutter, whom did not give his name, was inquiring about the size, where exactly it would be placed. Kimberly Oliver gave him a quick summary of the procedure that had been followed with the applicants request from the Planning Board for a Conditional Use Permit to open a gift shop on top of the hill. She explained that Steven Mclean had issues with the Planning Board and denied the conditional use permit and he asked for an appeal and that is what the Appeals Board was hearing at this meeting. She continued that the Appeals Board had to do a De Novo appeal which means that the board would hear all of the evidence from the beginning go through the 16 conditions just as the Planning Board would and make their decision based on this evidence that was presented to them. If they decided that the 16 conditions were met or not they would send it to the Planning Board with their findings and follow what the Appeals Board instructs them to do. She continues to explain that the Appeals Board is appointed and does not feel they have the authority to issue the permit, however can instruct the Planning Board to issue it.

The abutter asked if he had any say in this and Kimberly Oliver answered that if he had any information for or against the gift shop that this is why the public hearing is be held. He explained that he and his wife had bought the property for a retirement home and he was not sure if he would approve of a gift shop as a neighbor. Kimberly Oliver stated that she did not know his location in regards to the site of the gift shop, but explained that the shop is only seasonal. She continued that the gift shop would be allowed in this district with a conditional use permit. She pointed out that before you buy property you should do due diligence to know exactly what can and cannot be put in the district. She explains that because a person may not want something in the zone does not necessarily mean that it cannot be put there and as they go through the 16 conditions the abutters will get a better understanding of the conditions and how they would need to be met.13:59

John Medici asked if there would be time for public comment during the 16 conditions. Kimberly Oliver answered that the public hearing would be closed and they would go through the 16 conditions. She acknowledged that the abutter was not present at the last public hearing. John Medici stated that this is the first time this gentlemen is going to hear the information and asked if the board had heard the answers to the 16 conditions of is this the first time the board would hear them as well. Kimberly Oliver answered that all 16 conditions were presented at the July 13th public hearing. She clarified that they had been read, however, not decided on. John Medici asked if they were going to go back through those at this meeting. Kimberly Oliver answered that the applicant's legal counsel read them and gave the applicants answers and during this process questions were asked of the applicant and/or counsel for clarification. She continued to explain they had a site walk to get a better perspective on the project to make a final decision. She stressed that the public hearing was opened at this meeting for any new information that was not presented at the last meeting. She also stated that she did not feel that the board should start from the beginning to do everything that had

been covered at the last meeting. John Medici stated again that this will be the first time this gentlemen will be hearing the information and if he hears something in the conditions he may want to ask a question, and it sounds like he is out of luck at this point. David Coleman spoke up and stated that this dated back to December and is not new. Kimberly Oliver questioned that all the abutters should have received a letter from the Planning Board. John Medici answered that he did not know, but his understanding is a De Novo hearing is starting the process over and he understood that this meeting is just a continuation from the last meeting. He continued that he did not have any questions he was just hearing a gentlemen stands up that says he did not know what was going on. He stated that he had heard the 16 conditions before and the abutter is going to hear a condition and may have an issue with it as an abutter and may want to ask if something different could be done. Kimberly Oliver acknowledge what John Medici was saying, but felt that it was advertised and it was taped. She felt that if it were something really was questionable the board may considered listening to the abutters concerns or questions. She stated that is the board's prerogative. Kathy Ward stated that the Planning Board did not go through all of the 16 conditions and Kimberly Oliver stated that they had a public hearing and all the abutters received a letter. She reiterated that there was ample notification.

Barbara Fifield stated that she had a question, as an abutter, about the process relative to a De Novo appeal. She began to explain that in some submissions that Mr. Mclean had given to the Board of Appeals, it stated that the Board of Appeals holds its own hearing, accepts any relevant testimony presented and creates its own record. The Board of Appeals then uses its record to decide whether the Planning Boards, and she said she would skip the next phrase and continued with, is clearly contrary to the ordinance and unsupported by substantial evidence in the record. Her question to the Board of Appeals is how can the board collect a brand new set of requirements and compare it to a decision made by a Planning Board on their set of data. It is a whole different set of requirements that was submitted by the applicant. Kimberly Oliver answered that the Board of Appeals is not comparing what the Planning Board did. She explained that basically the Planning Board denied the applicant the permit and the Appeals Board was asked to hear the whole permit process as it is in the ordinance and that is what the Appeals Board is doing. Barbara Fifield, holding up the document she had, stated that she was reading it from the De Novo section and it says in the document that the Appeals Board has to compare, you have to determine that the Planning Board has made the proper decision. David Coleman stated that by reviewing 4 and not 16 conditions, the Planning Board did the process incorrectly. Barbara Fifield stated, I see, and would address that a little later.20:06

Kimberly Oliver asked if anyone had any new information. She then asked Ronald Phinney, the CEO, if he could clarify the 5% grade requirement of the Fire Department on a road that was addressed at the last hearing. Ronald Phinney answered that he had discussed this with the assistant fire chief earlier in the week, and he noted that Steve Mclean may have the letter that the assistant fire chief Jason Johnson wrote regarding this requirement. (Steven Mclean gave a copy to the Board and one to Ronald Phinney. Ronald Phinney continued that he thought the argument that only a 5% grade is allowed is purely ludicrous because anyone that was at this meeting from

either direction traveled a road with more than a 5% grade. He noted that most of the roads in town that are not perfectly flat exceed a 5% grade. He continued that after reading the information in the NFPA manual that it was addressing the construction of a fire truck, which is lower on the rear of the apparatus to have easier access for the fire fighters to remove equipment. They are typically quite long and have a long overhang behind the rear wheels. He continued that if you start at too straight of a grade the rear bumper will drag. The 5% grade is probably a determination for the worst case scenario and according to the manual that this applies to the transition between traveling down route 5 and turning onto the road of this project. Where it begins cannot be more than 5% and then when the truck is on the road the next problem would be is it a navigable pitch for the apparatus to get to the destination. In his opinion the answer to this would be that it would because at the site walk a fire apparatus was taken up there so it is obvious that it can make the grade. Kathy Ward stated that her understanding was that Limerick Fire Department 2 years ago changed that so that it was a 5% grade. Ronald Phinney stated that he did not think that the Limerick Fire Department or any fire department could write their own rules. He continued that what the manual is referring to is what is known as fire lanes laid out in shopping centers and other places and signs that say no parking. Kathy Ward stated that the fire department did it for another business in town about 2 years ago. She asked Ronald Phinney if he thought the 12% grade was ok. He answered that if the fire engine with a full load of water on can make it up there with no problem he did not feel there was an issue. Kathy further question that even though another vehicle kick rocks up that would not matter. She continued that if they can't make it in the summer there might be an issue in the winter. Ronald Phinney admitted that if they can't make it in the summer they certainly would not be able to make it in the winter. He did not, however, see that anyone had any trouble making it so far. Kathy Ward stated that she is the one who got hit with a flying rock. Ronald Phinney stated that he did not know what kind of rocks were thrown up and Kathy Ward stated that it was nothing serious to hurt the car it was just the point of it did happen. Ronald Phinney continued that it is a gravel road and some of the particles will move whether it is a small car like his or a big fire engine. Kathy Ward said not up to the windshield. Ronald Phinney stated that hopefully they will not try to spin out when they are going up over and it probably would not be possible anyway with a fire engine because it is not made for race track driving. He stated that he thought a 5% grade was kind of ridiculous and it was not what it was intended for. He further stated that Jason Johnson had a message into the State Fire Marshall and was hoping that they could get clarification from him, but has not heard anything at this point.

Kimberly Oliver asked if anyone else had any information they would like to add at this time.

Barbara Fifield stated that she had a number of issues that she would like to talk about. She said it might be best as they went through the review because they are organized around the conditional uses. She stated that she could give the board her package that could be analyzed when they go into deliberation. She continued that she would go into everything at this point which is about 15 minutes of material. Kimberly Oliver stated that when they are in the decision making she did not want to be back and forth.

After reading the documents that Barbara Fifield presented Kimberly Oliver asked if the board had any questions and they answered that they did not. She asked if they wanted to take these up as they were going through the conditions, Kathy Ward stated that she did not care, David Coleman stated that they had the information that was presented and if Barbara Fifield wanted to elaborate on it she is free to do so. He continued that if it becomes time that there are any questions the board can ask the public or the individuals it concerns. He did not want to get into the situation where there is a public hearing within the decision making process and Kimberly Oliver agreed. She wanted any questions to be addressed while they were still in the public hearing. She address one of the concerns in Barbara Fifield's material regarding the road stating that if it becomes a public road and Kimberly Oliver stated it is a private road and will never become a public road. David Coleman stated that only way it could become a public road was if the town accepted it as such and Kimberly Oliver replied that it would have to be up to town's standards in order to do this. Kathy Ward asked that if anything were to happen would Kathy and Steve Colby be responsible. Kimberly Oliver answered that they sold an easement, and Kathy Ward stated that where it is there road they could be responsible and Kimberly Oliver answered that they could be. She continued that it is hard for a landowner to be liable for a road per say. She asked Kathy Ward for a scenario. Kathy Ward answered that she is a landowner with a road and she has already been liable in one case. She continued that one thing that could be done is signs that say pass at your own risk.

Steve Mclean asked the board to read the letter from Natalie Burns, the town's attorney, and he stated that she addressed in the letter. She explicitly stated that the road issue is not a concern. Kathy Ward stated that the road issue was not an issue for Steven Mclean. Steve Mclean asked to please read Natalie's letter. Kathy Ward continued that was what the letter stated that it was not an issue for Steve Mclean to get the permit, but Kathy Ward was saying it was an issue for Steve and Kathy Colby.

Kimberly Oliver read the letter from Natalie Burns and it stated: The Board of Appeals does not have to use the Planning Board application because we are not the Planning Board and we do not use the procedures that the Planning Board uses and we do not have to ask questions that the Planning Board asks. We should ask questions that we feel are appropriate, and must abide what the ordinance and our by-laws. Kimberly Oliver continued that according to Natalie Burns the only thing the Appeals Board may not have done correctly was notifying the abutters, but since they abutters had been notified regarding this meeting then the Appeals Board had met the requirements. The Appeals Board is hearing this as a new application it does not matter what information was given to the Planning Board it only matters what information is given to this board. She continues to read that to clear up the issues with the right of way, unless the right of way limits who can use the right of way and for what purpose then the right of way is limitless. Kimberly Oliver explains that any limits would have had to been set forth in the easement. So the right of way, which is for egress and utilities, is given to him, his heirs and assigns, invites or anyone else can use this right of way. She reads further that according to Natalie that if the board decides that someone meets the standards

set forth in the ordinance for conditional uses the board can only issue an approval of the conditional use application and the board can also apply conditions to the approval as set forth in the ordinance. Basically the rest is personal. She stated that was the legal opinion that the Board of Appeals received. She explained that the road is a private road and would always be a private road with an easement that has been given to Steve Mclean with no restrictions. Kathy Ward reiterated that Kathy and Steve Colby's would be liable. Kimberly Oliver answered that the Colby's should have realized this when they conveyed the easement.

Barbara Fifield wanted to clarify that when she said the road was a public road she did not mean legally it was a public road, what she meant was that the road is now being opened to the public relative to this business that is going to be at the top of Cannon Hill. She further explained that all of her comments that were submitted relates to the zoning ordinance requirements relative to this project. In other words if there is additional traffic on this road and there is a lot more deterioration and results in additional expenses, there is going to be money that paid to maintain this road. It will be up to the owners and probably herself in this situation. She relied upon the fact that it was sold to her as a private road it was stated as a private road and now she has a home there, and she is now responsible for traffic that is being generated for a business. She continues that the traffic also has other implications that relate to the zoning ordinance and that is additional noise, tons of dust. She states that she does not know where anyone was at the site walk, but that dust was up 50 feet to the trees. She states that maybe this will not be normal for this business, because it will not be so many people at one time, but that is how much dust was generated and as Kathy Ward stated there was rocks strewn on people's windshields. She goes on to say that the issues relates to, what are the effects or impacts of the use of the road and that is what this zoning ordinance deals with, noise, vibrations, dust. She states that they are all in the zoning ordinance. She continues with fumes, reduced value to her property due to these factors. Kimberly Oliver states that is an opinion. Barbara Fifield admits that it is an opinion but it is a qualified opinion. She explains that she approached an appraiser and asked if this happened and the appraiser said that you can't really put a value on it, but what you can say is commonsensically if you change your environment from what your appraisal was done and valued at to start and that you now have higher traffic, more maintenance, dust and fumes, the air around your house is no longer clean, you have loss of privacy and increase noise, common sense tells you that these conditions have a depreciative effect on the value of your home. That was her was the appraisers response to Barbara Fifield. That is a qualified opinion that Barbara Fifield wanted to pass along to the Board of Appeals. She explained that the road is an issue not an issue in terms of legality but it is an issue relative to the Limericks Zoning Ordinance.43:28

Kimberly Oliver asked if there were any other questions from the audience and with none she asked the board members and Kathy Ward stated she would like to ask Sean Carroll to comment on what he was told regarding the 5% grade when he wanted his permit.

Sean Carroll stated that the history of the 5% grade as pertains to him and his knowledge and experience with the Fire Department was that they stood by as a hard and fast rule that a driveway or entry to anything, access to the lot, which is not just the transition to the road or lot but the complete access, the whole shebang could not go greater than a 5% grade. That is a 1 foot per 20 feet. He continued that they were flabbergasted and asked how can that be. He stated that they had referred to all the roads and driveways in town. He went on to say they asked how can that be the rule land they said, well there is nothing we can do about it. They quoted a DOT manual for emergency awareness, it said that it was a recommended rule. Kimberly Oliver asked Sean Carroll if this was a rule for a piece of property for Sean Carroll. He stated that it is how it is turning out. Then he continued that it was not because it was them, it wasn't because it was propane, and it was because it was anything. It was because Fire Fighter, James Mclean and Assistant Chief, Jason Johnson, who were appointed by the Fire Chief to deal with this. He continued to explain the 5% rule came up, they couldn't figure out why and how that could be in the eleventh hour, when they had done everything that they had wanted all along. They kept moving the goal post and suddenly came the 5% grade. So they tried and tried and the Assistant Fire Chief and Fire Fighter said they could get around it, they owned the lot next to the lot that was proposed for the project. If they took that lot and started at the very far end, they could start the drive way there and go across that lot, spoiling that lot, and across the proposed lot and you could possibly get a 5% road in there. They said again is this coming out of a DOT manual emergency awareness, is it a recommendation it is not a law it's not ordinance, it's not code. Again they asked how is this. Local jurisdiction can only make rules more stringent not more lax. So they were making the rule the rule not a recommendation. Kimberly Oliver asked Sean Carroll, "So they used this rule against your business" and Sean Carroll answered "correct". Sean Carroll continued that they went to the civil engineer and had another professional engineered drawing done, the guy worked up there 2 days and he said "I don't believe it, but I did it". "If you start on the very far corner of your lot, and go across this lot and across the next lot you can have a 5% grade, I got it down to 4.8%". He continued that when push came to shove that is what drove us down to the Industrial Park. Because they were not willing to pay close to 2 grand to have this guy do the work, they would then have to build a road and spoil a lot. He states that was his experience and dealing with the gentlemen on the Fire Department, they said their hands were tied. This is the rule and could not get around it. So fast forward to now suddenly, he had brought this up early on, that it was not an approved road and where is the 5% grade. Everybody got amnesia. He continued that they couldn't get the Fire Department to rule on it. Now they are saying this is just for the transition, and he had to remind them and bring out the engineer drawings, and the letter that he had submitted to both the Planning Board, before he was on the board, and the Appeals Board. The letter from the Fire Department stating this, and this and this and please bring us your drawing of your 5% grade. So it's not how they suddenly got amnesia, it's not a hard and fast rule. It's awful peculiar so all he was asking for, the applicant has 80 or 90 acres up there, certainly he has plenty of room to do the same thing, to have a 5% grade. He can't get the Fire Department to rule and can't get them to say yes, we did it to torpedo your project. Or yeah we know we forgot, but thanks for reminding us. Nothing Crickets. He stated that he keeps

bringing it up and he didn't think it is sour grapes, it just what fair is fair. He asked how can you have spot ruling like that. He said it just keeps getting swept under the rug. He said he is not forgetting about it.

Barbara Fifield read conditional use 1 states the definition and requirements set forth in the zoning ordinance must be met for the specific use. However, there is nothing in the ordinance which says that all requirements must be reviewed by the Planning Board before a conditional use is denied. That needs to be checked based on what Mr. Coleman stated. Kimberly Oliver reiterated that what every happen with the Planning Board is irrelevant. The Appeals Board is listening to things new and will be approaching it that way. She continued how they made their decision or whether they did all 16 or what not is irrelevant.

Barbara Fifield stated she wished to go back to the beginning of this relative to process. She continued that for the record she would like the Appeals Board to define the rational facts and reasoning that were used to make the decision to hear this appeal. David Coleman answered that the applicant was denied a conditional use permit and he was afforded an appeal by the Limerick Zoning Ordinance. Barbara Fifield questioned that it had nothing to do with the fact that not all the requirements were heard. Kathy Ward answered that it was because it was denied. The applicant wanted to appeal the denial. Barbara Fifield replied that she had heard Mr. Coleman say that it was because the comments weren't reviewed. David Coleman stated that he felt the board did not make a proper decision, because it did not review the entire application. Barbara Fifield continued in order to define what the requirements are in addition to the 16 you need to look at the definition of the conditional use that is in the Zoning Ordinance and is says that this is a use that is permitted only review and approval by the Planning Board. A conditional use is a use is appropriate without restrictions, which if controlled under the provision of the ordinance would promote the purpose of the ordinance. She continues saying this is not addressed at all by Mr. Mclean in his submission that she had received from the Appeals Board. He did not address the purposes. She states that she had included them in her package that she had presented to the Appeals Board. The purposes that she had found in the Zoning Ordinance are in the preamble on page 3 and also in article 7A on page 29, which is the first paragraph of the conditional uses.53:17 She continued on This is relative to the road issue and its conditional use 2, 3 & 12. Mclean stated in his appeal application that there will be light to moderate family vehicle traffic. However, he stated at the site review that a porta potty will be on site and a large water tank would be on site in terms of his response to water source in one of the conditional uses. These facilities would require large service trucks on a periodic basis. Material required for the gift shop would most likely delivered by truck. This increase burden on King Field Road would contribute to additional road degeneration. There would be more fumes and noise. Fumes, noise, dust, light, glare, they are all part of the conditional use requirements that these do not happen and impact abutters to the property. She stated that she question whether the light and glare issue is going to be completely eliminated. The work hours were stated at 9 to 5:30 p.m. by December certainly, we know it is dark in Maine around 4 or something. People are coming down and going up the hill at that point there will be headlights.

There will be light and glare from that. She continued that she was addressing the issue of safety which is conditional use 4 & 10. And she contends that King Field Road is an unsafe exit way. There is a hill just to the left when you exit King Field Road which obscures all the traffic that is on Route 5. If there is a vehicle on the top of that hill heading south it cannot be seen. Traveling at 50 miles per hour it takes 2 seconds, because she sat there and timed it one day. She states she waited until she saw a car and hit a button and it was 2 seconds later and that car was at that entrance and exit area on King Field Road. The public will be unaware of how to safely exit this road. She stated that she had to train herself how to leave that road. She has to concentrate on looking waiting and pulling out really really fast. So her point is there is a safety issue for the public in going in and out of this road. There are two other roads which can be accessed, Stevens Way on Route 5 has longer visibility and the Fire Tower Road from 160. She continues Erosion was addressed by Mr. Mclean relative to the site at the Gift Shop. His response does not include any reference what so ever to erosion on King Field Road and the impact on abutters. It is a shared road used by multiple owners with minimal traffic, right now it is Mr. Mclean and Myself using that road and a few of my friends and a few of his acquaintances. It is not an issue. She states that due to the elevation gain at King Field Road, which the CEO, Mr. Ron Phinney, and herself measured at a maximum level at 17.5 % erosion occurs at every single moderate rain fall, and what is water going to do it's going to erode the sides of the road. She states that she included in her package to the Board of Appeals a picture of the deep gullies that are forming. Last year there was significant erosion and Mr. Frank Carroll Sr. so graciously came up and graded the road. This year there was hardly any water so it was not that much of an issue, but with additional car and traffic on that road it will exacerbate the erosion conditions, increasing maintenance cost and over burdening the road. Speaking of maintenance cost in the CEO manual there is a state law that says abutters are responsible for the culvert and road maintenance of any entrance way to a state road. Which means her and Kathy Colby. This project will increase their expenses. Kimberly Oliver replies that the entrance is down on Route 5. Barbara Fifield said that is what she was talking about. Those entrances have to be maintained the owners of that road not the public or not the town. She states that she included that Exhibit in her disclosure to the board. She continued that there were some other issues relative to safety and access and this was addressed about the emergency equipment so she did not talk about that. She stated that she was just going to talk about normal car access to the top of Mountain View Road. She included a photograph. There is a sign right beside Mountain View's Road, and it says "Snow Zone, Traction Devices Required". She stated that she did not know this sign was there until the site review was done recently when she was going through the gate she saw a little sign and she has taken a photograph of it. So what that is saying not everybody can get up over this hill unless you have proper snow equipment. She continued, as far as King Field Road is concerned, on 2 occasions last year her vehicle was stuck on King Field Road. She left it there until the person came to plow, walked up to my house on the hill and she has winter tires and she states that she was unable to get up that road because of the elevation gain. So if there are a lot more people going up and down this road this will be an issue. She continued on with lighting; Mclean in his appeal application has not defined exterior lighting, only that "it will be limited". This statement does not

demonstrate what type of lighting and intensity is to be used or where it will be placed. Several residents on Cannon Hill Road have been disturbed in the past by lighting on this lot. She goes on to say that his claims, on this site, not visible is inaccurate. The building and flagpole on Cannon Hill are exposed and visible to residents on Cannon Hill Road so lighting would also be visible to them. Lighting on signs on Route 5 would also be visible to residents both on Cannon Hill and to her on King Field Road. She also questions the water issue and wasn't sure if there would be a state law where employees are servicing the public requiring hot water and soap. She refers to the porta potty that will be on site. Employees would be using this and handling gifts and wrappings. She stated that needed to be explored and talk about as well. 1:02.06

Kimberly Oliver asked if anyone else would like to speak and with no other questions or comments from the public she closes the Public Hearing, took a short recess. When they reconvened Kimberly Oliver asked the board members if they had a chance to review the July 13th, and July 28th, minutes, Kathy Ward had, David Coleman had not received them. Kimberly Oliver decided to hold off until their next meeting to approve those minutes.

Kimberly Oliver stated that they would now begin the decision process by going through the check list for reviewing evidence and decide whether to approve or deny the application and she asked the following questions.

1. Does the board still believe that they have the authority to make a decision on the application under the ordinance?
David Coleman made the motion that they did have the authority based on the opinion from legal counsel they did have the authority to make a decision on the application under the ordinance. Kathy Ward second it all were in favor. 3-0
2. What does the ordinance statue require the applicant to prove? Kimberly Oliver stated that he proved he had a denial and the Board of Appeals has listened to it as a De Novo. The Limerick Ordinance or statue does not prohibit or limit the type, being proposed. She states this is process the town's attorney advised them to go through it. So the applicant has presented his application as evidence and at this point it is the Appeals Boards decision to start going through each of the 16 conditions.

At this point the board proceeded with the 16 conditions.

1. Will meet the definition and specific requirements set forth in this ordinance for the specific use.

Response: **Based on the zoning ordinance the applicant use is permitted in this district with a conditional use permit.**

David Coleman made a motion that based on the information presented by the applicant

and the Limerick Zoning Ordinance I find that this condition is met. Kathy Ward Second it. Kimberly Oliver asked if there was any discussion and David Coleman said that he did have some concerns that as the Appeals Board, the ordinance states that the Planning Board may approve an application, it does not say that the Appeals Board can and he understands that they need to review it as De Novo. Kimberly Oliver asked if he thought they had the authority to go through the 16 conditions and make their decision based on their findings each one of the conditions individually and then remand back to the Planning Board to move forward from that point on and David Coleman answered that it is the only way he could see it working. Kimberly Oliver agreed with David Coleman. After discussion all were in favor 3-0

Kimberly Oliver proceeded to number 2.

2. Will not have a significant detrimental effect on the use and peaceful enjoyment of adjacent or nearby property as a result of noise, vibrations, fumes, odor, dust, light, glare or other causes.

Response: All required site improvements for this use are already in place on the property. The use contemplated is a small/moderate scale seasonal retail use which will operate from October through December and is expected to generate light to moderate family vehicular traffic. It will not generate any appreciable noise, vibrations, fumes, odor, dust, light or glare and will not affect the peaceful enjoyment of adjacent or nearby properties. Because of the location of the site on top of a mountain it is not immediately adjacent to any dwellings and is not in the direct sightline of any adjacent or nearby property.

Concerns were raised regarding the maintenance of the roads

David Coleman made a motion that the condition will be met with additional conditions, and Kathy Ward second it. David Coleman asked Steve Mclean to discuss his plans to maintain the road between the months of October and December. Steven Mclean stated that his part from the gate up, he raked every two weeks. He stated that up until the prior year he raked the entire road. He continued to explain that he could apply calcium and/or water to keep the dust down.

He told the Appeals Board they could add conditions. Kimberly Oliver stated that she did not feel this board could set conditions, but they could inquire if there is a problem what does the applicant intend to do to alleviate the problem the problem without putting undue stress or financial burden on the applicant. She did not feel they should make state the conditions the applicant had to make. She would rather hear from the applicant that this is what the applicant plans to do. Steve Mclean stated that for the last 6 or 8 years he has maintained that road. He stated that of the many projects that he could have at this site that this would be the least impact. Kathy Ward asked what if there was an early snow. Steve Mclean stated that snow and ice as with any other place in the world, you plow it and you sand it. She asked him if he was going to do that and he responded that if he is going to get up and down the road then he will have to do it. He said there may come a time when it would have to be paved. He stated that the Planning Board wanted all applicants to go through the 16 conditions with the CEO and he had done that with Ronald Phinney. David Coleman stated that the abutters, and the Colby's have stated that they wanted Steve Mclean to maintain the road and there is more than one easement granted to other people so a maintenance agreement is ludicrous to try to control with that many people involved. Kimberly Oliver stated that it is a private road and a private road is usually maintained by all of the people who access it as well as share in the cost. David Coleman stated that it would be reasonable for Mr. Mclean to maintain the road if he expects customers to visit. His concern was if certain conditions are not set that in the future there could be complaints and the CEO would have to go out there and take care of it. John Medici from the audience stated that he thought the board was not going to set conditions and Kimberly Oliver answered that she would have rather the applicant provide the evidence of what he would do if a situation were to arise. She clarified that it was her opinion that she did not want to set conditions, she would rather see everything fully defined and decided up front. She stresses that this is not an easy situation and she and the board are trying to do the very best they can based on legal counsel. John Medici stated that the board did not feel they had the authority to approve the permit anyways and Kimberly Oliver agrees that they do not have the authority to approve the permit. However, the board can agree to make decisions on every one of 16 the conditions. She continues to explain that if they could say this condition will be met as long as these conditions were added to it and then that would be given to the Planning Board in that manner. John Medici continues to question the board on how they may be able to present the conditions to the

Planning Board that have been met and others that would be met with certain evidence by the applicant verifying that these added conditions would be observed. He continues that the board could be there all evening if they try to set conditions for the 16 conditions. He felt that if the board felt the conditions were met with the information provided then they should vote that they have been met with the information provided. And if they are not vote that they could be met with conditions.

Sean Carroll stated that first off he wanted to congratulate the Appeals Board on getting the applicant to speak to them because it was more than he spoke to us during the Planning Boards process, which is how they got to this point. He continues to say that what Mr. Medici says is true, but that is the reason why they were there. The Planning Board posed conditions and the applicant refused to comply so they denied the permit. He goes on to say that the Appeals Board is going through the exact same thing that the Planning Board went through, but with a little bit more dialogue from the applicant. The Appeals Board got this because the Planning Board could not get the applicant to discuss conditions. When the Appeals Board remands it back to the Planning Board it is giving the Planning Board something that the Planning Board gave to the Appeals Board. He stated that he was not there to decide what the Appeals Board should and shouldn't do, but now the Appeals Board is experiencing what the Planning Board got. They tried to get more definition, more information from the applicant and they could not. Kathy Ward stated that they could not issue a permit it has to go back to the Planning Board.

Steven Mclean stated that Natalie, the town's attorney, said that the Appeals Board could set conditions. He continued that he would plow, sand and water the road as needed during business hours. David Coleman made a motion that based on the information provided by the applicant the agreement to maintain Mountain View Road to King Field Road in regards to plowing, sanding and dust control between October and December this condition would be met. Kathy Ward asked if it would be from the top of the mountain down to the gate and David Coleman responded that it would be to the entrance of Route 5 while the business is in operation. Kimberly Oliver clarified that it would be from the entrance of Route 5 to the top of the hill. Kathy Ward questioned if this will be in writing by the applicant and Kimberly Oliver stated that it has to be part of the conditions. She asked Steve Mclean if he was in agreement with this and he answered that he was. Kathy Ward second it and all were in favor 3-0.

Kimberly Oliver proceeded to number 3.

3. Will not have a significant adverse effect on adjacent or nearby properties.

Response: Please **see response to number 2.**

Kimberly Oliver stated that the business will be in operation 3 months out of the year and in her opinion she did not believe there would be an adverse effect on property values. David Coleman made a motion that based on the information provided by the applicant and the review of the site walk, this condition will be met. Kathy Ward second it. With no discussion realized all were in favor 3-0.

4. Will not result in significant hazards to pedestrian or vehicular traffic or significant traffic congestion.

Response: **The site is accessed by a private right of way. Currently only one other developed lot is accessed by that private way. There will be no pedestrian traffic other than visitors to the site. A DOT entrance permit for a subdivision development has been granted for said right of way.**

Kimberly Oliver stated that they had a copy of the deed with the easement and an entrance permit from DOT. David Coleman made a motion that based on the information provided by the applicant and a review of the site this condition has been met. Kathy Ward second it. Kimberly Oliver asked if there was any discussion. With no discussion realized all were in favor 3-0.

Kimberly Oliver proceeded with no. 5

5. Will not result in significant fire danger.

Response: **The site of the proposed use is clear and has a gravel base.**

David Coleman made a motion based on the information provided by the applicant and a review of the site, he paused to ask if the Fire Department had provided anything regarding the 5% grade. Steve Mclean stated that the Fire Department had approved the site. He stated that he did not have a copy with him but it was in his car that he would provide. (He gave them a copy after the meeting) David Coleman continued with his motion, motion based on the information provided by the applicant and a letter from the Limerick Fire Chief this condition will be met. Kathy Ward second it. Kimberly Oliver clarified that this condition will be met once they have received a copy of the letter from the Fire Chief. Steve Malmude asked what letter they were referring to. David Coleman answered that typically the Fire Chief will review a site determine location for fire extinguishers, review the egress and ingress for emergency vehicles etc. Sean Carroll asked if the 5% grade would be addressed and David Coleman answered that

they had received a letter from the Fire Chief in regards to the 5% grade, but was unsure if he would be satisfied with that. He stated that it basically states that the Fire Chief met with the CEO and the 5% grade is only applied to the approach angle to prevent causing damage to emergency vehicles, and does not apply to the overall roadway. Sean Carroll stated that must have changed in the last 3 years. Kathy Ward stated that she had been told by members of the Fire Department that 5% grade was still in effect. With no further discussion the vote was 2-1 in favor.

6. Will not result in significant flood hazard or flood damage, drainage problems, ground or surface water contamination or soil erosion.

Response: the proposed use will be conducted in the existing building on the site which has been in place for over 10 years and will not be modified for this use. Likewise the ground improvements, parking lot and access ways have been in place for approximately 5 years and will not be further modified for this use. Drainage culverts are in place and connected with route 5 culverts. The site has never experienced drainage issues, flood damage or soil erosion. The proposed use has no attributes which would contribute to or cause ground or surface water contamination.

David Coleman made a motion based on the information provided by the applicant and an agreement to maintain the roadway during the months the business is in operation this condition has been met. Kathy Ward second it. Kimberly Oliver asked for discussion. Kathy Ward asked how you could be at the top of a hill and not have any erosion. Steve Mclean stated that when he and Frank Carroll designed the road they put in ditches on each side, there are 3 culverts. Kathy Ward if there was any wash out and he answered there was no wash out unless there was a big hurricane. They agreed that was a different case. David Coleman stated that there is always erosion but it needs to be addressed. With no further discussion all were in favor 3-0.

7. Will not cause a safety hazard because inadequate access to the site or to the buildings to the site for emergency vehicles.

Response: The site is accessible from route 5 and route 160.

Kimberly Oliver stated that she did not agree that it was accessible from route 160 for emergency vehicles. David Coleman made a motion based on the information provided by the applicant and a letter from the Fire Chief dated Tuesday August 2nd this condition would be met. Kathy Ward second it. With no discussion realized all were in favor 3-0.

8. Has proposed exterior lighting which will not create hazards to motorist traveling on adjacent public streets. Is adequate to the safety of the occupants and users of the site and will not damage the value and diminish the usability of the adjacent properties.

Response: The proposed hours of operation for the retail use 9:00 a.m. to 5:30 p.m. so the need for after dark lighting will be limited. Due to the location of the site as explained in item two the lighting required for the site should have no impact to any adjacent properties.

David Coleman asked Steve Mclean if he could provide a detailed plan for where the lights will be placed. Steve Mclean answered that the lighting will be in coordination with the CEO as is with every other conditional use permit. He continued that he will have 4 lights on the corner that will be backlit. Kimberly Oliver wanted to clarify that he would have lighting around the building and his answer was that is all that need to be done. Kathy Ward asked if they would be on all night for security. Steven Mclean stated that he did not believe there would be a problem with that but a small LED light should not affect anyone. David Coleman made a motion based on the information provided by the applicant this condition has been met. Kathy Ward second, with no further discussion realized all were in favor

3-0.

9. Makes provisions for buffers and onsite landscaping which provides adequate protection to neighboring properties from detrimental features of the development.

Response: The only structure which will be involved in the proposed use, has existed on the site for over 10 years. Due to the location of the site explained in item 2, the structure and other ground improvements are not visible from any adjacent property.

David Coleman made a motion based on the information provided by the applicant and agreed to conditions this condition will be met. Kathy Ward second it. With agreement from the applicant to place rocks to the right of the driveway and in the parking lot area the board continued to vote on motion. With no further discussion realized all were in favor 3-0.

10. Makes provisions for vehicular loading and unloading and parking and vehicular and for pedestrian circulation on site and on to adjacent public streets which neither create hazards to safety nor imposed significant burdens on public facilities.

Response: Please see attached aerial photograph with scaling which shows the provisions made for vehicular loading and unloading and parking for vehicular pedestrian circulation on the site. The proposed use is not adjacent to any public street and the entry to the private right of way which provides access to the site has received a DOT entrance.

David Coleman made a motion based on the information provided by the applicant and review of the site and an agreement by the applicant to maintain the road, plowing and sanding in the winter, dust control as well as the placement of rocks in specified areas this condition will be met. Kathy Ward second it. With no further discussion realized all were in favor 3-0.

11. Makes adequate provision for waste water or solid waste and for the prevention of ground or service water contamination.

Response: The facility will make use of a portable toilet. He went on to say that they could have further stated that the proposed use is not going to generate solid waste or waste water. The waste that it generates will be trash, paper, boxes, etc.

David Coleman made a motion based on the information presented by the applicant this condition will be met with the use of a portable toilet. Kathy Ward second it. David Coleman asked the applicant if he would have a dumpster and he replied that he would take it back to his shop. Kathy Ward asked the applicant if he needed a septic or drywell. The applicant's response was no because no one was living there and if he needs it he already has a septic design that has been approved. With no further discussion the vote was 2-1 in favor.

12. Makes adequate provision to control erosion or sedimentation.

Response: As explained above the existing site improvements have been in place for a number of years. The site has not experienced any issues with erosion or sedimentation. The proposed use will not create any increased erosion or sedimentation at the site.

David Coleman made a motion based on information presented by the applicant and the use of best management and practices and grading of the road between October and December during the period of business this condition will be met. Kathy Ward second it. With no discussion realized all were in favor 3-0.

13. Makes adequate provision to handle storm water runoff and other drainage problems on the site.

Response: As explained above the existing site improvements have been in place for a number of years. The site has not experienced any issues with storm water runoff or other drainage problems. The proposed use will create any increased storm water runoff or other drainage problems at the site.

David Coleman made a motion based on information presented by the applicant and review of the site this condition is met. Kathy Ward second it. With no discussion realized all were in favor 3-0.

14. Provides for a water supply which will meet the demands of the proposed use.

Response: The water demands of the proposed use will be minimal. The applicant has a 200 gallon water tank on site

David Coleman made a motion based on information presented by the applicant this condition will be met. Kathy Ward second it. David Coleman asked the applicant if there a provision for grey water. The applicant replied that according to the CEO it was not required to have water on the site. With a portable toilet he and the CEO thought it would be good to have some water to wash hands. Kathy Ward stated that if you wash your hands the water would be going into the ground. The applicant replied then scratch the water tank because it is not required. Kathy Ward stated she felt that water should be on site. Steve Mclean stated he would put in a holding tank and take it to his shop or into the portable toilet that will get pumped out weekly. Sean Carroll asked about a fire. He explained that it was his understanding the Fire Department had a rule on a certain number of minutes they had to be there and hook up to a fire hydrant, and there is no water up there. David Coleman stated that is why he wanted to see a letter from the Fire Chief, because that addresses the fire safety. This condition is talking about the demands for the use of the water itself. Sean Carroll stated that he thought it should be asked and he stated that he was sure it will be dismissed, but he felt it should be asked, and was sure they would come up with a letter that says they don't need water to fight a fire. 1:46.53 Kimberly Oliver stated that the one with the Fire Department has already been addressed and until the board receives a letter that condition will not be met. She continued to explain that this particular condition is for the water demands of the proposed site, for the water demands of a gift shop. John Medici stated that if you are going to store water you have to have a way to get rid of it. Take that storage water out. You can't put it in a tank and pump it out. You can't wash your hands in a bucket and dump it in a porta potty. He addressed the CEO regarding a holding tank and the CEO answered that a holding tank is not legal. So maybe the water needs to be taken out. If you are going to have water there even for just washing your hands you have to get rid of it. He wasn't sure if the water was a requirement for a business for a business. Kathy Ward stated that working in retail things are dirty and you have to be able to wash your hands. Kimberly Oliver argued that this is a gift shop not a restaurant. Kimberly Oliver asked the applicant how many employees he planned on having. His answer was just himself. He said it is not required take it out. Kimberly Oliver stated that there was a business in town that was going to have a portable toilet and because it was going to be year round and more than 5 employees they needed to have a bathroom. Since this project will be seasonal and only the applicant as an

employee it would be ok. Ronald Phinney agreed. David Coleman withdrew his original motion or stipulate that there will be no water on site. Kathy Ward stated that you will go to the bathroom and not wash your hands. Steve Mclean replied there will be hand sanitizer in the portable toilet. David Coleman made a motion based on the information provided by the applicant no water will be on site and a portable toilet with hand sanitizer will be adequate for the water supply. 1:52.00 Kathy Ward second it and with no further discussion 2 were in favor 1 opposed.

15. Makes adequate provision for the transportation, storage and disposal of hazardous substances and materials as defined by State law.

Response: **Not applicable, there will not be anything like that on the site, unless they have hazardous Santa's.**

David Coleman made a motion based on information presented by the applicant this condition is not applicable. Kathy Ward second it. With no discussion realized all were in favor 3-0.

16. Will not have an adverse impact on significant scenic vistas or on significant wildlife habitat, which could be avoided by reasonable modification of the plan.

Response: **The only structure which will be involved with the purposed use has been in existence on the site for over ten years. Due to the location of the site explained in item 2 the structure and other ground improvements are not visible from any adjacent property.**

David Coleman made a motion based on information presented by the applicant review of the site this condition has been met. Kathy Ward second it. With no discussion realized all were in favor 3-0.

Kimberly Oliver stated that all conditions have been met except for number 5 until the board receives a letter from the Fire Department. She continued to explain that once the letter is received this will be remanded to the Planning Board, with the decision of the Appeals Board to grant this permit. David Coleman made a motion that hours of operation will be Friday, Saturday, and Sunday, 9 to 5 in the months of October, November and December. Kathy Ward second it. Kimberly Oliver stated that was an additional amendment after condition 16. With no further discussion all were in favor 3-0. David Coleman stated that based on the information provided by the applicant and the findings of fact the 16 condition and the additional condition, he moved that the board remand this to the Limerick Planning Board for the issuance of a conditional use permit. Kathy Ward second it. Kathy Ward asked if they had 4 or 5 other things that the Planning Board goes over after the 16. David Coleman and Kimberly Oliver replied

that was for used cars. With no further discussion all were in favor 3-0. Kimberly Oliver told Steve Mclean that he and the Planning Board will get a written decision from the Appeals Board.

The Board Members discussed minutes and an ordinance to review and update. Kimberly Oliver stated a tentative meeting in October. David Coleman made a motion to adjourn, Kathy Ward second it and all were in favor 3-0.

Respectfully submitted,

Laura L. May