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November 14, 2016

Town Clerk

Town of China
571 Lakeview Drive
China, ME 04358

RE: Planning Board Appeal: Varney

Dear Sir /Madam:

Enclosed is an Appeal of the October 25, 2016 Planning Board denial of the Varney Conditional Use Application.

The Municipal Appeal Ordinance sets forth requirements for an Appeal which, on their face, are impossible to comply with based upon the information presented to the Appellant. Specifically, the Appellant, pursuant to Chapter 9, Section 2(B) Para. b., must "clearly state the basis for the appeal and the specific findings of fact or conclusions of law being appealed." A letter from CEO Paul Mitnik, dated October 28, 2016, to the Appellants, sets forth: "*The Board made the following find as a basis for the denial:*

- c. *The proposed use will have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other cause.*

The noise from the music being played appeared to be the Board's primary concern from their discussion of this standard. "

My client has contacted Mr. Mitnik to obtain more specific findings of fact and was informed that none existed. In the alternative, he requested copies of the minutes of the October 25, 2016 Planning Board meeting, he was informed that they were not available.

In the absence of the Municipality being able or willing to provide a sufficient record, this Appeal, to comply with the Appeals Ordinance, will be based exclusively on the information available which is the October 28, 2016 Mitnick letter.

In summary, enclosed is an Appeal of an arbitrary and capricious decision of the Planning Board, the decision being contrary to the evidence of record. Unfortunately, the

Municipality is unable to provide any record and the Board is unable to articulate the rational for the decision. Further, the Appeal being set forth on a form which diverges from the applicable Ordinance.

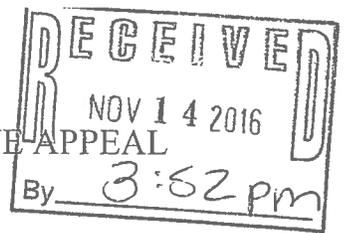
Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Evans', with a stylized, cursive script.

Matt Evans

Encls.

APPLICATION FOR VARIANCE OR ADMINISTRATIVE APPEAL
TO THE APPEALS BOARD



Name of Appellant Parris Varney & Catherine Varney

Mailing Address 701 Neck Rd Telephone 207-837-3663

Town/City China Zip 04358

Name of Property Owner Parris & Catherine Varney Map 42 Lot 11

Location of Property 701 Neck Rd Book 1056 Page 287

The undersigned requests that the Board of Appeals consider one of the following:

1. **An Administrative Appeal.** Relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit, pursuant to the China Land Development Code, Chapter 9, Appeals, Section 2(B):

an error was made in the denial of the permit.

the denial of the permit was based on a misinterpretation of the ordinance.

there has been a failure to approve or deny the permit within a reasonable period of time.

other see attached

Please explain in more detail the facts surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

2. **A Variance.**

a. Nature of Variance: Describe generally the nature of the variance _____

In addition, a sketch plan of the property must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features of the lot in question.

b. Justification of Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the land use ordinance would cause undue hardship. There are four criteria, all of which must be met before the Board of Appeals can determine that a hardship exists. Please explain how your situation meets each of these criteria listed below, pursuant to the China Land Development Code, Chapter 9, Appeals, Section 2(A):

1. The land in question can not yield a reasonable return unless the variance is granted.

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

3. The granting of a variance will not alter the essential character of the locality.

4. The hardship is not the result of action taken by the appellant or a prior owner.

I certify that the information contained in this application is true and correct.

Date: 11/8/2016

Signature of appellant



Please return this form to the China Town Office at 571 Lakeview Drive, China, ME 04358 with the \$25 application fee. You will be notified of the date of the hearing on your appeal. Please note, all costs to advertise the public hearing notice in the newspaper and to send notice certified mail, return receipt to all abutters (China Land Development Code, Chapter 9, Appeals Section 2(A)(IV), Notification) is the responsibility of the appellant.

Schedule of Attachments

October 28, 2016 Mitnik Letter

Tax Map showing Approximate location of structures

Tax Map showing entire parcel

Tax Card showing sizes of structures

Satellite image of parcel

Topographical image of parcel

Jayson Murray sound measurement report (as submitted to the Planning Board)

Attachment to Paragraph 1 of the Administrative Appeal Form.

TOWN OF CHINA

571 Lakeview Drive
China, ME 04358



Telephone 207-445-2014
Fax 207-445-3208
E-mail chiname@fairpoint.net
www.china.govoffice.com

October 28, 2016

Mr. Parris Varney
Ms. Catherine Varney
701 Neck Rd
China, ME 04358

RE: Denial of Conditional Use Application

Dear Parris and Catherine:

The purpose of this letter is to inform you that the China Planning Board denied your Conditional Use Application on October 25, 2016 for the use of a barn on your property for assembly events. As required by China's Land Use Ordinance Section 6(B)(IV) this letter informs you of the reason for denial. The Board made the following finding as a basis for the denial:

- e. The proposed use will have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare or other cause.

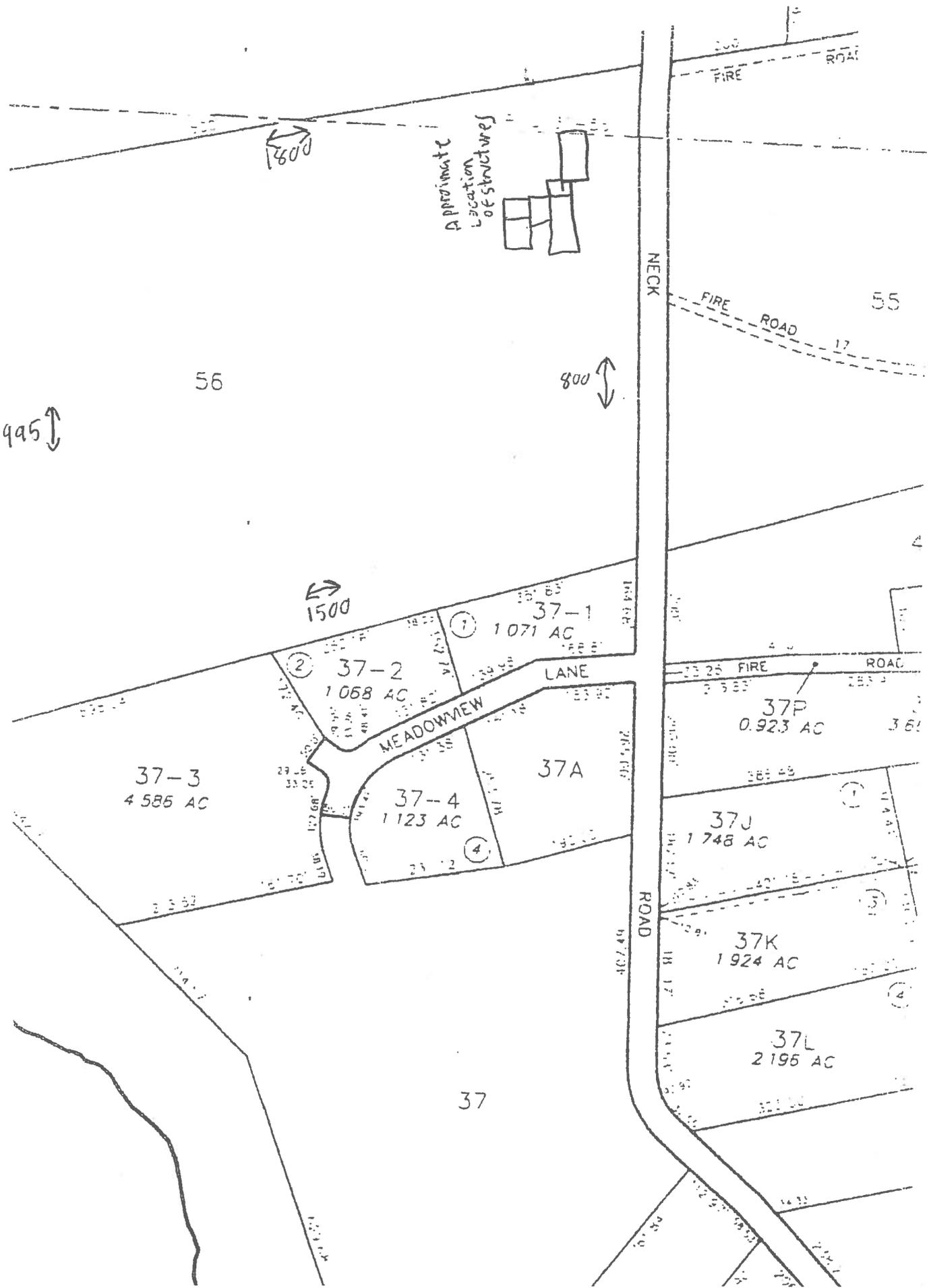
The noise from music being played appeared to be the Board's primary concern from their discussion of this standard.

You have a right to appeal this decision to the China Appeal's Board but must do so within thirty (30) days of the date of determination. The date of determination was October 25, so you have until November 23 to appeal (the 24th is Thanksgiving Holiday). The fee for an appeal is \$25 and the cost of public notice in the newspaper and certified mail notification to abutting property owners. You should follow the procedure outlined in Chapter 9, Section 2(B) of China's Land Development Code, specifically administrative appeals. You may also re-apply for approval with changes in the application made to address the reason for denial. If you have any further questions please do not hesitate to contact me.

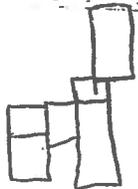
Sincerely

A handwritten signature in cursive script that reads "Paul Mitnik".

Paul Mitnik, P.E.
Codes Officer, Local Plumbing and Building Inspector
Local Health Officer



Approximate
Location
of Structures



56

55

37

995

1600

800

1500

37-1
1071 AC

37-2
1068 AC

37-3
4586 AC

37-4
1123 AC

37A

37P
0.923 AC

37J
1748 AC

37K
1924 AC

37L
2195 AC

NECK

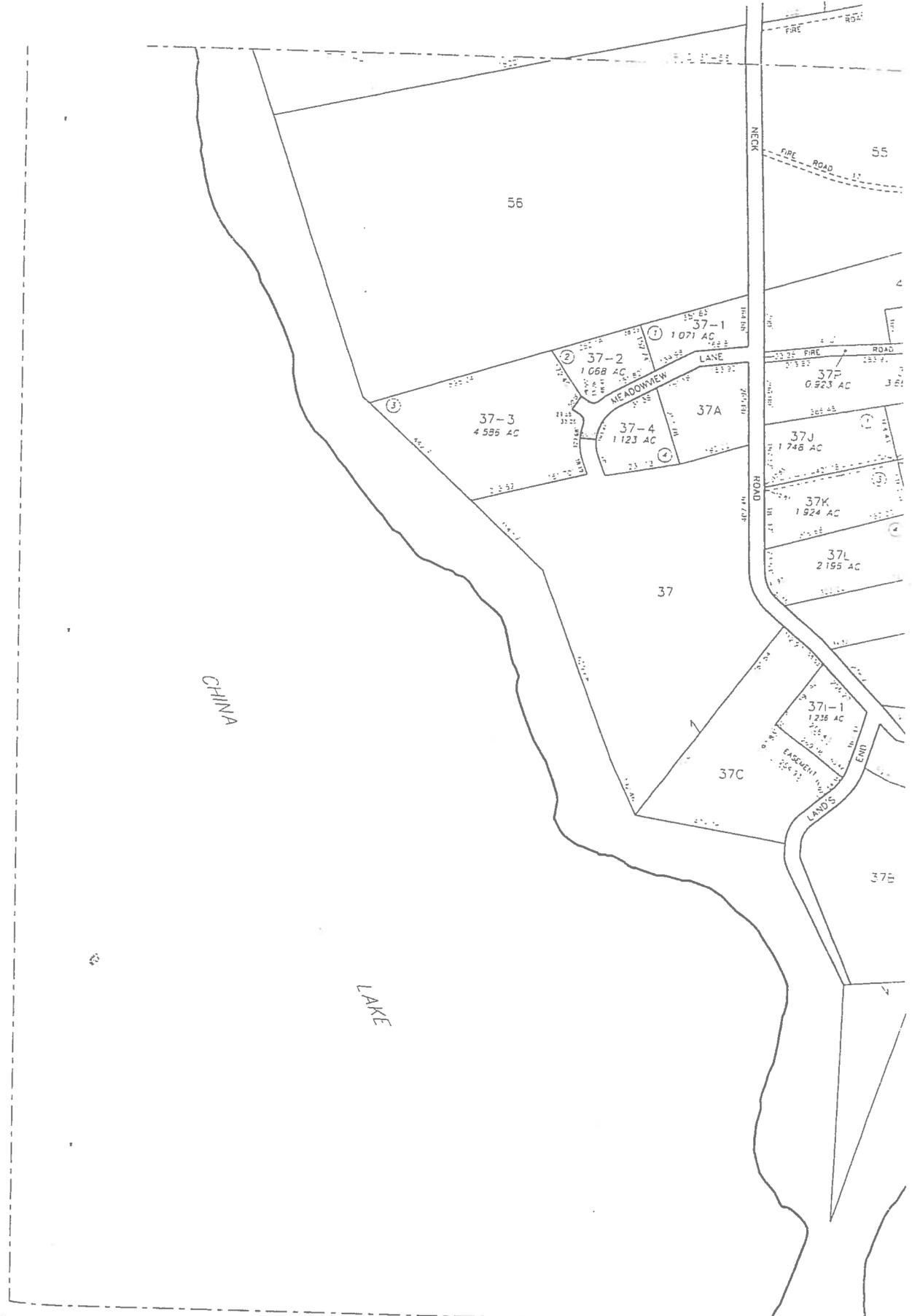
ROAD

FIRE ROAD

FIRE ROAD

LANE

MEADOWVIEW



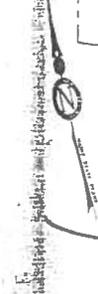
NOTE:

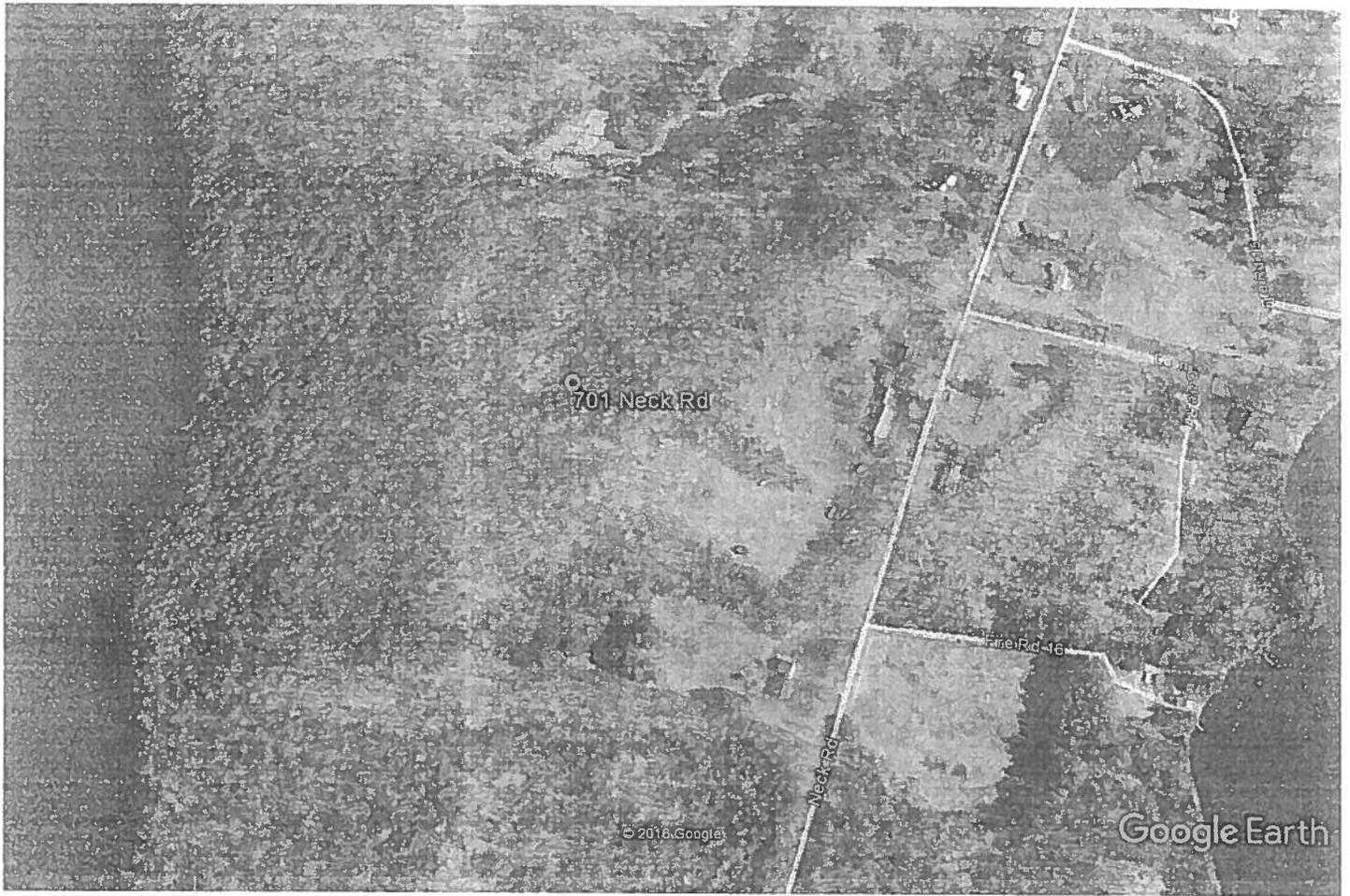
THIS MAP IS FOR ASSESSMENT PURPOSES ONLY
AND IS NOT INTENDED FOR PROPERTY CONVEYANCE
OR LEGAL DESCRIPTION.

MAINE STATE PLANE COORDINATE GRID, WEST ZONE, NAD 1983, US FEET
BASEMAP SOURCE: STATE OF MAINE SPRING 2003 DIGITAL ORTHOPHOTOGRAPHY
MAP DIGITIZATION BY AERIAL SURVEY AND PHOTO, INC
SOURCE MAPS 1986 MYLAR TAX MAPS BY J.W. SEWELL COMPANY

MAP LEGEND

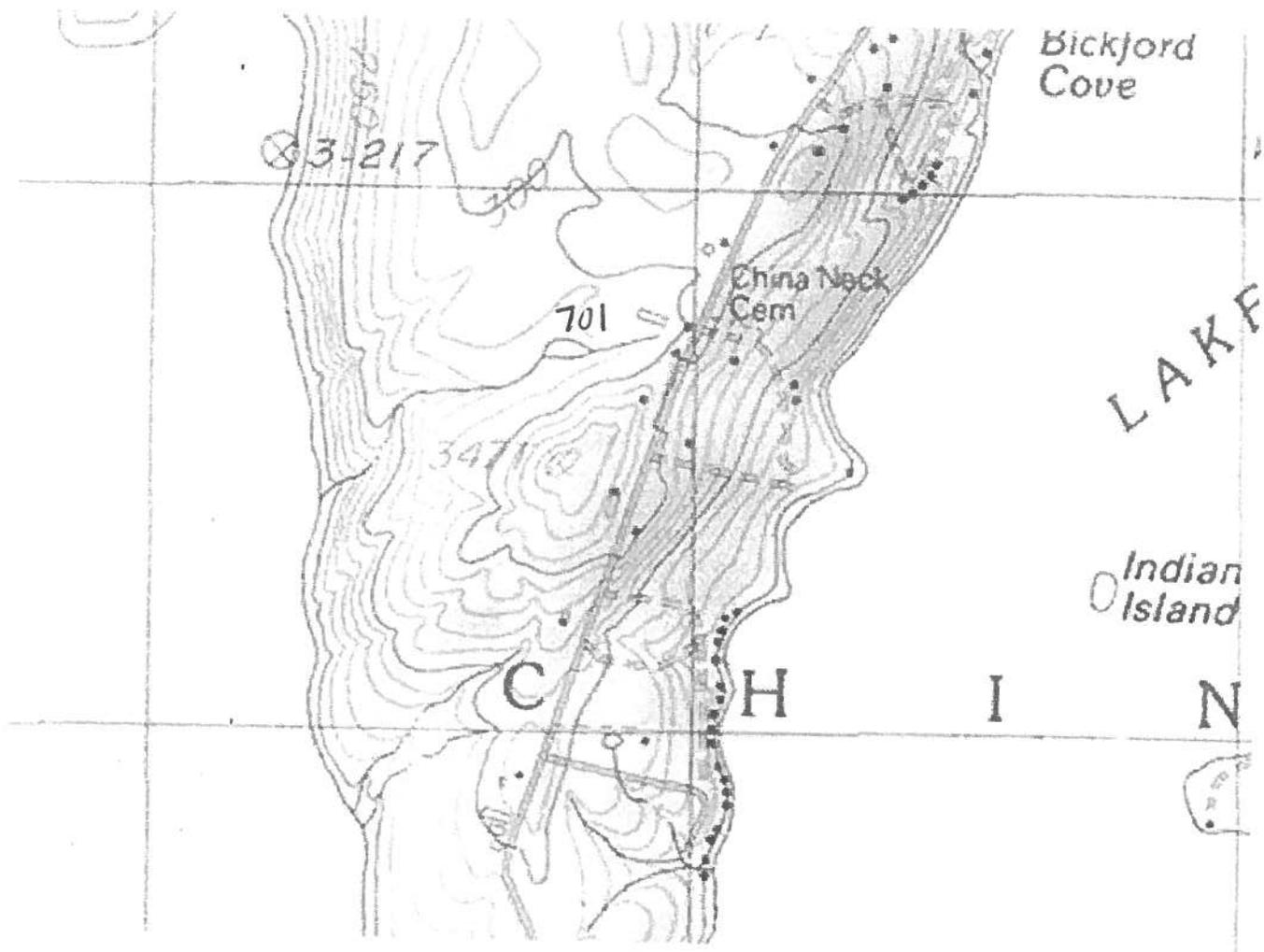
PARCEL NUMBER	388	PARCEL BOUND	———
PARCEL DIMENSION	—	ROAD RIGHT OF WAY	———
PARCEL AREA	— 224 —	EASEMENT LINE	———
SUBDIVISION LOT NUMBER	(14)	PRIVATE RIGHT OF WAY	———
WATER LINE	———	WETLAND





Go gle Earth





Measurement of Parris Varney's Proposed Venue

Introduction

Parris Varney had asked for an evaluation of the dB SPL levels at his barn venue, both inside and out across the road, for the purposes of obtaining a venue license. The findings are as followed.

Measurement Setup and Software

The measurement software used was Rational Acoustic's Smaart v.7, with a Behringer ECM8000 measurement microphone. A JBL K12 was used to produce both pink noise and music. Smaart had been used to calibrate the dBFS max to 120 dB SPL C-weighted for the purposes of this process.

Findings

Measurements were taken in three different locations: ten feet from the speaker, approximately fifteen feet from the building, and across the road parallel to the building. Two different types of measurements were taken as well - one of ambient noise with no sound, and one of a country rock song. See the table and screenshots from Smaart attached.

Conclusion

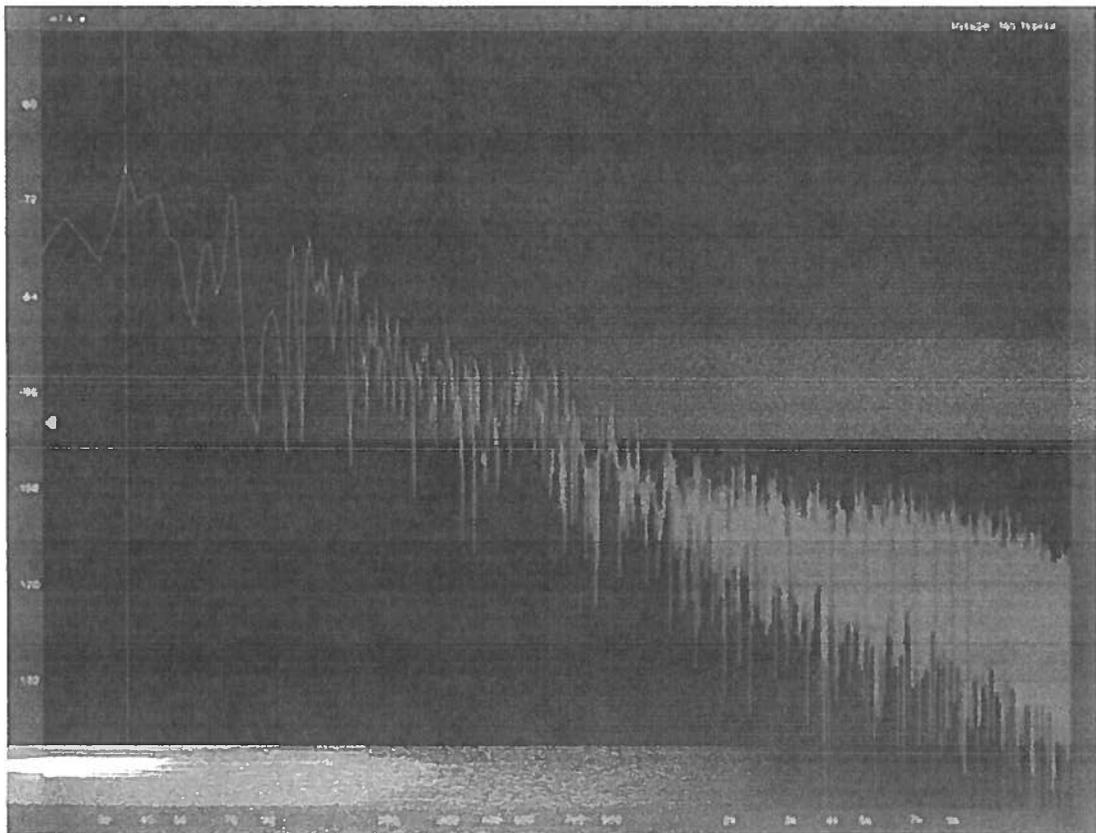
It is doubtful that the venue will produce any obstructive or distracting noise levels, providing that any sound amplification systems remain inside the barn.

Any questions or concerns can be emailed to Jayson Murray at jaydmurr@gmail.com.

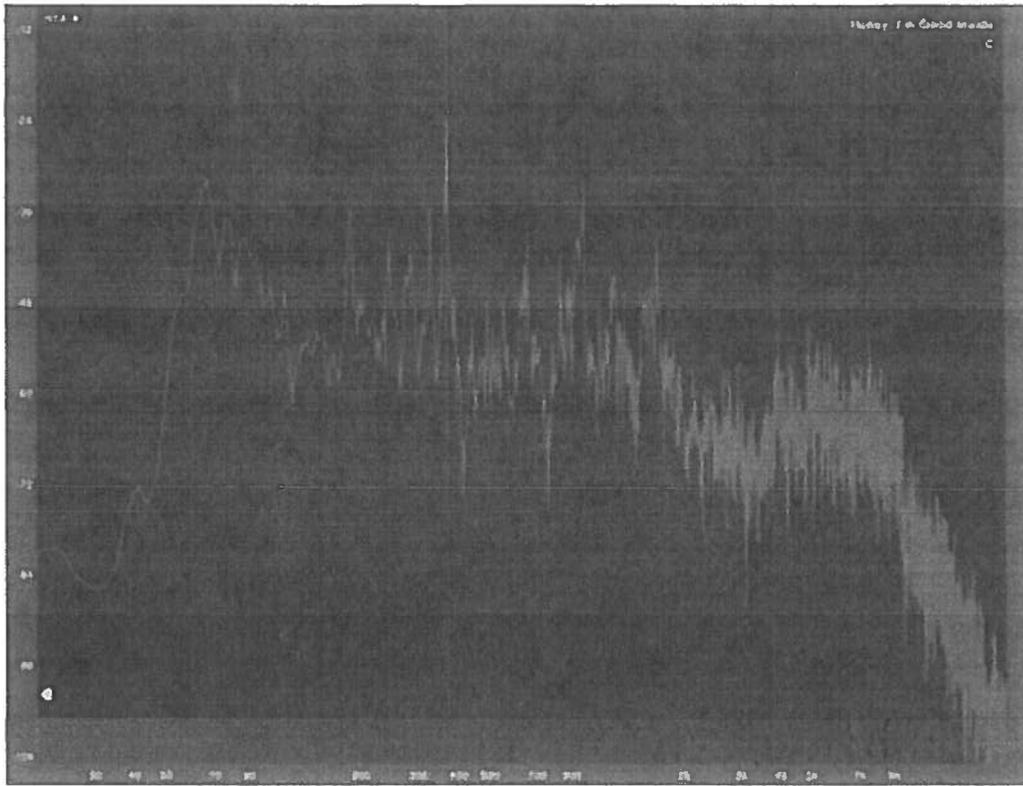
	Ambient Noise Level	100 dB music
Inside	52.28 dB SPL (fig. i)	95.48 dB SPL (fig. ii)
Outside, 15 ft from building	59.84 dB SPL (fig. iii)	63.87 dB SPL (fig. iv)
Outside, across road	54.04 dB SPL (fig. v)	56.12 dB SPL (fig. vi)

Figures

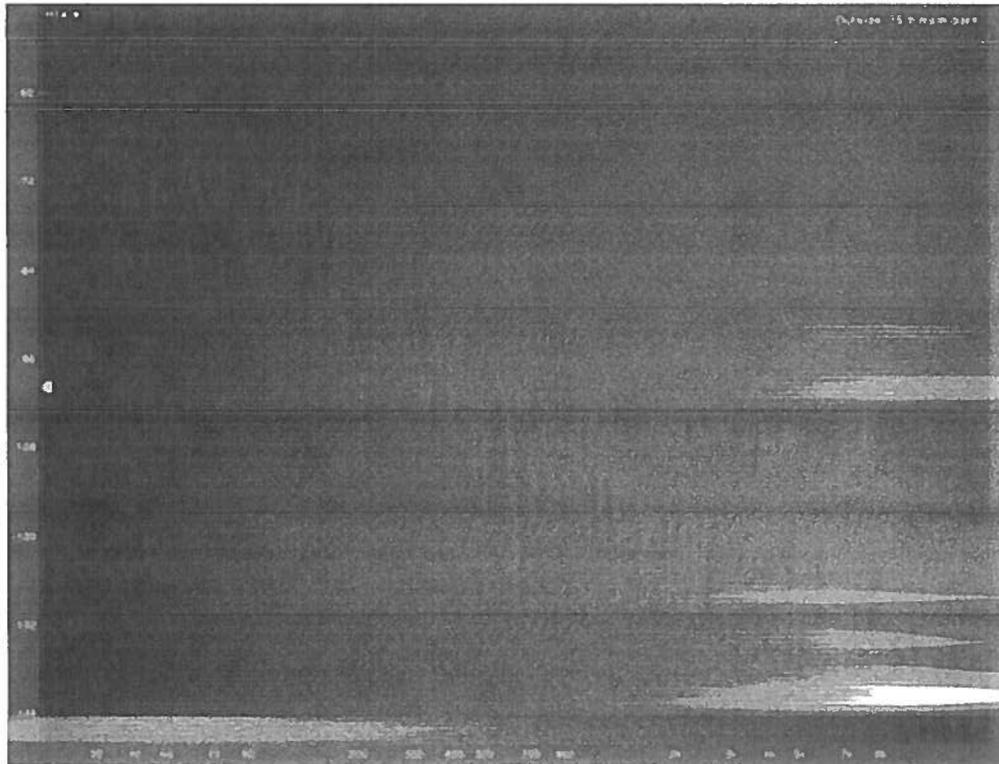
i.



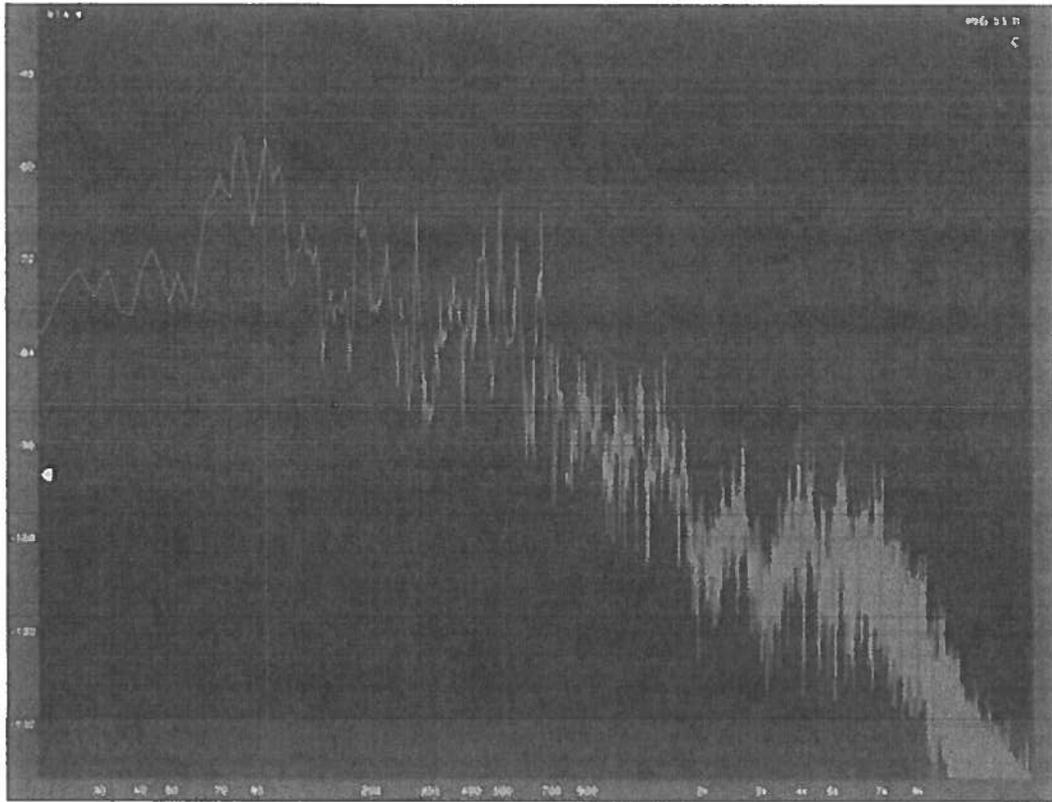
ii.



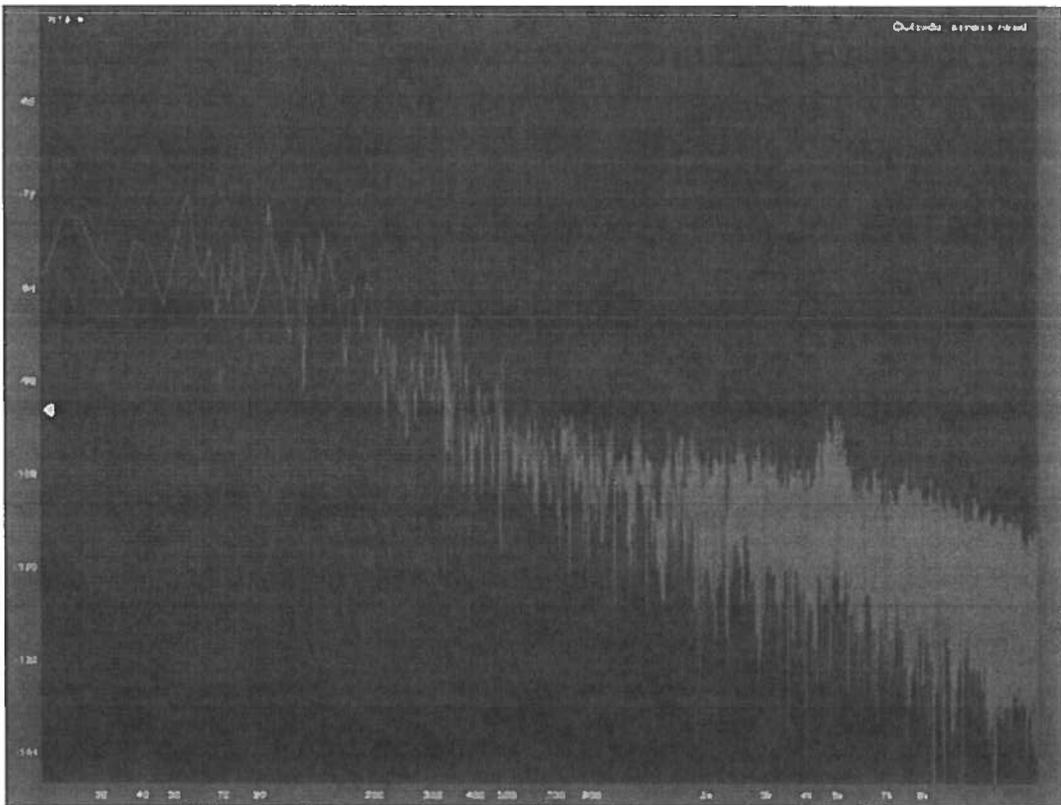
iii.



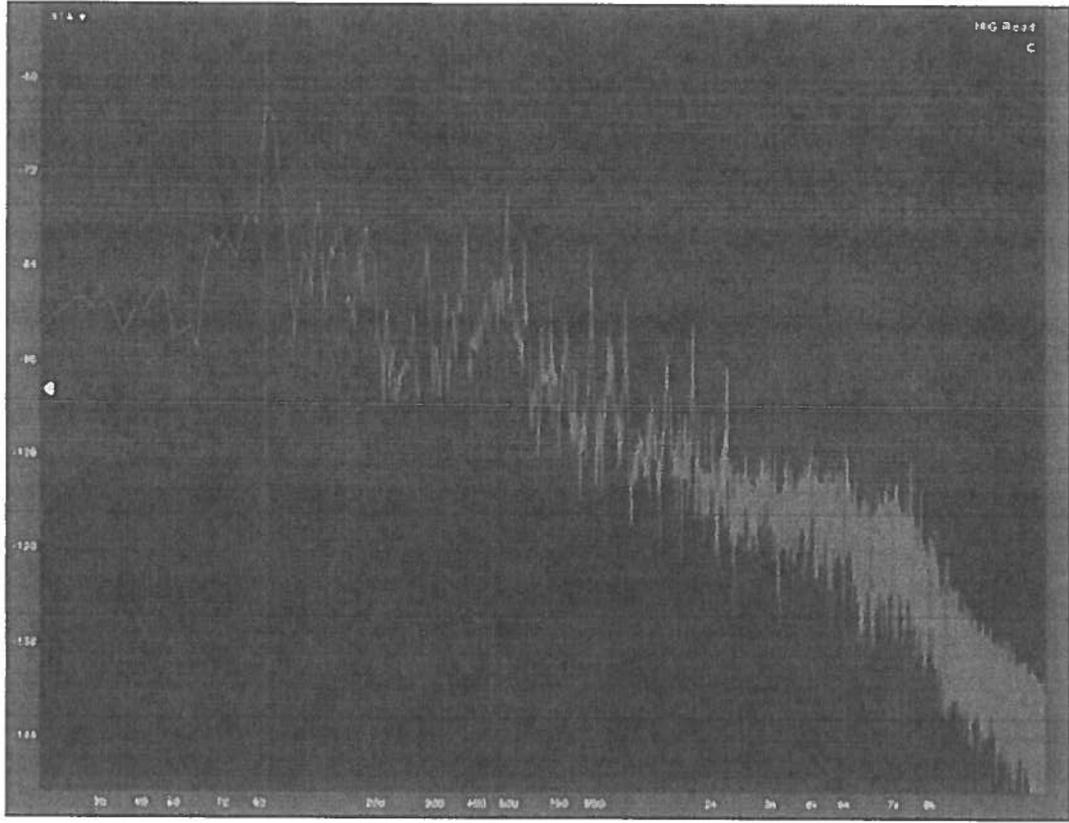
iv.



v.



vi.



Attachment to Application or Administrative Appeal to the Appeals Board – Varney

1.

In presenting their application to the Planning Board the Varney's had a sound measure respond conducted in response to concerns of the Planning Board. This study which was presented to the Planning Board demonstrated that music being played in the barn, the proposed wedding venue, at the edge of the road, still some 50 feet from the nearest abutters residence was only TWO decibels above the ambient back round noise. China has no Ordinance regarding noise, there is no subjective standard by which the Planning Board can measure if the noise "will have a significant detrimental effect on the use and peaceful enjoyment of abutting property" Two decibels above ambient back round noise can not, even under this very arbitrary standard be found to be as being "significant detrimental".

In addition to making a finding contrary to the evidence of record an additional error was made by the Planning Board. James Wilkens, is the owner of the house closest tom the proposed wedding venue. Mr. Wilkens, a member of the Planning Board did recuse himself from the final vote but did participate in discussing the matter and it was quite clear from his comments that he was in opposition to approval of the Varney's Application. Additionally, while the final vote of the Application was taking place, Mr. Wilkens was present and was physically displaying his disagreement with each criteria approval by the other members of the Board. Mr. Wilkens activities through out the entire application review process was a clear violation of the Varney's right to receive a fair and unbiased review of their Application.