

May 19, 2015

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Permitting and Environmental Review File No. **TEMP140012**

**SHOOTING STAR GARDENS**  
Temporary Use Permit Appeal

Location: 22233 SE 197th Place, Maple Valley

Applicant: Marylou Ozbolt-Storer  
*represented by* **Brian Lawler**  
Jameson Babbitt Stites & Lombard, PLLC  
801 Second Avenue Suite 1000  
Seattle, WA 98104  
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Appellants: Bonnie and Mike Curran  
*represented by* **Jeff Eustis**  
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Seattle, WA 98104  
Telephone: (206) 625-9515  
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King County: Department of Permitting and Environmental Review  
*represented by* **Fereshteh Dehkordi**  
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Snoqualmie, WA 98065  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

**EXAMINER PROCEEDINGS:**

Hearing Opened:	May 5, 2015
Hearing Closed:	May 5, 2015
Record Closed:	May 12, 2015

**GENERAL INFORMATION:**

File: TEMP14-0012

Applicant: Shooting Star Gardens  
Marylou Storer-Ozbolt  
22233 SE 197th Place  
Maple Valley, WA 98038  
Phone: (425) 595-5554

Location: 22233 SE 197th Place  
Maple Valley, WA 98038

Parcels: 042206-9062; 042206-9030 and 042206-9072

Size: Three parcels approximately 3.12 acres

Zoning: RA-5 (Rural Area)

To host up to 20 outdoor private events from May through October 2015. The proposed hours of operation will be from 9:00 a.m. to 11 p.m. Fridays and Saturdays and 9:00 a.m. to 9:00 p.m. on Sundays. Typical event size will be between 75 to 120 guests. Parking and portable sanitation facilities will be provided on site for the event's patrons. Music will be played during the outdoor events and within the tent. Food will be catered through licensed third party contracts and will be prepared off-site.

**FINDINGS, CONCLUSIONS AND DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS and CONCLUSIONS:**

1. Except as modified herein, the facts set forth in report of the Department of Permitting and Environmental Review (DPER) to the Examiner (DPER Report), Exs. 1-1A, and the DPER testimony are found to be correct and are incorporated herein by reference.

### Background

2. In 2012-2014, under Temporary Use Permit (TUP) B12M0207 (2012 TUP), Marylou Ozbolt-Storer operated Shooting Star Gardens, an outdoor wedding venue, on property she and her husband own in the Rural Area in the vicinity of Maple Valley. The TUP limits events to Friday and Saturdays between 10 a.m. and 11 p.m. and Sundays from 10 a.m. to 8 p.m. with no more than one event per day and two per weekend in the years following 2012. Weddings were required to be scheduled to allow at least one free weekend per month. Ex. 8. DPER renewed the TUP for 2015.
3. In 2014, Ms. Ozbolt-Storer (Applicant) applied for a new TUP in order to increase the permitted number of events to 20 and to expand the permitted hours to 9:00 a.m. to 11 p.m. on Fridays and Saturdays and 9:00 a.m. to 9:00 p.m. on Sundays. In response to a question from the Examiner, the Applicant testified that from set up to take down, events will be limited to 10 hours.
4. On December 29, 2014, DPER approved the new TUP subject to 15 conditions, Ex. 28, and issued Determination of Nonsignificance (DNS) under the State Environmental Policy Act (SEPA), Ex. 2.
5. Bonnie and Mike Curran (Appellants), neighbors immediately to the south of Shooting Star Gardens, timely appealed the DNS and TUP. Their principal concern is noise. At the hearing in this matter, they presented evidence and argument related to both noises associated with regular lawn and garden maintenance activities and noises generated during the scheduled events which include music, attendees conversations, and other sounds.

### King County Noise Code

6. The Shooting Star Gardens property and the immediately surrounding area is zoned Rural Area.
7. Chapter 12.88 KCC establishes maximum permissible sound levels. For sounds generated in the Rural Area and received in the Rural Area, the maximum sound level is 49 dB(A) (lowered to 39 dB(A) from 10 p.m. to 7 a.m. on weekdays and 10 p.m. to 9 a.m. on weekends). These maximums may be exceeded in any one-hour period by: 5 dB(A) for a total of 15 minutes; 10 dB(A) for a total of 5 minutes; or 15 dB(A) for 1.5 minutes.
8. Unamplified human voices are exempt from the sound code. KCC 12.94.010.F.
9. In 2012-2014, the Applicant actively monitored noise level by a handheld device during the events for compliance with the noise code and required clients to reduce sound levels when levels measured exceeded the maximum permissible sound level. Exs. 18-20; Storer testimony.
10. The Applicant has sought to minimize noise impacts to Appellants by double walling the south side of the 2-sided 30' x 60' tent in which wedding ceremonies and dancing occur;

adding sound insulating materials between the tent layers; constructing a solid cedar wood fence fronted by a bamboo fence; and planting an arborvitae. Exs.1 and 30, Storer testimony.

11. The Shooting Star Gardens contract expressly provides on the signature page that "Music level (noise) must be kept at permitted decibel level at property lines (49dbs)." Ex. 31A.
12. The Applicant provided DPER logs of sound levels registered by a handheld noise monitor at or near her common property line with Appellants during events held in 2012-2014. Ex. 20. Except for a short "spikes" at three events in 2012, when the measured sound level exceeded the permitted maximum by 1-2 dB(A), the log showed compliance with a maximum sound level.
13. Appellants also monitored sound levels and submitted to DPER their own activity log for the summer of 2014. Exs. 13 and 15. These reports identified five event dates during which Appellants recorded the sound level exceeding 49 dB(A). Ex. 15 does not provide durations of the exceedances. Ex. 13 provides the duration for only one of the measured exceedances. For one 10 minute period on September 27, 2014, Mr. Curran measured the sound level at the property line at 48-55 dB(A). This measurement does not indicate the duration that sound exceeded 49 dB(A) and, thus, does not demonstrate that the event violated the noise code or the 2014 renewal of the 2012 TUP.
14. Appellants did not register a noise complaint with the King County Sheriff. Bonnie Curran testimony.

#### Issue 1: Actual Consideration of Environmental Factors

15. The DPER Report correctly explains that, when a threshold determination is appealed, the Hearing Examiner's review has two parts – an inquiry into the adequacy of the information used to make the determination and then an evaluation of the determination itself. It also correctly states that, under WAC 197-11-335, the standard for adequacy of information is that which is "reasonably sufficient to evaluate the environmental impact of a proposal." However, its assertion that any inadequacy may be remedied by the Hearing Examiner under the authority of KCC 20.24.080 is incorrect.
16. KCC 20.24.080 does allow the Hearing Examiner to examine all available information, but the Hearing Examiner's review does not substitute for the review the lead agency must conduct under SEPA. DPER, as the lead agency, must actually consider environmental factors in a manner sufficient to be *prima facie* compliance with SEPA's the procedural dictates. *City of Bellevue v. King County Boundary Review Board*, 90 Wn. 3d 856, 867, 586 P. 2d 470 (1978).
17. DPER's decision to issue a DNS is accorded substantial weight. RCW 43.21C.090; KCC 20.44.120.A.3.
18. Appellants contend that because DPER did not indicate the results of its review of the Applicant's environmental checklist on the checklist itself or on any other document, the

record fails to show actual consideration of environmental factors. *Currans' Closing Argument*, p. 2.

19. In making a threshold determination, DPER must consider mitigation measures which the applicant will implement as part of the proposal. WAC 197-11-335(1)(c).
20. As indicated above, DPER issued the DNS and TUP on the same day. The TUP evidences review of the Applicant's noise monitoring and the Currans' noise concern and imposes a requirement to professionally measure noise levels for at least two events and propose mitigation to lower noise along the commonly property boundary between the Applicant's and Appellants' properties if needed, Ex. 28, ¶ 6, p. 5, Conclusions 3-4, p. 13; Condition 7, p. 8. It establishes end times for music programs, requires that all music and dancing occur within an enclosed tent and that any loudspeakers or other sound transmitting devices be positioned to minimize propagation of amplified sounds toward exterior property boundaries and adjacent properties. *Id.*, Condition 9, p. 15. It attaches 2 letters from Appellants outlining their concerns and the activity logs they maintained as well as the Applicant's response to those letters. *Id.*, Attachments D and E,
21. DPER testified that it imposed the requirement for professional noise measurements in response to the differing noise measurements submitted by the Applicant and the Appellants.
22. DPER actually considered noise impacts of the authorized events.

#### Issue 2: Mitigation Conditions

23. The noise mitigation conditions are summarized in Finding/Conclusion 19 above.
24. Mitigation includes monitoring an impact and taking appropriate corrective measures. WAC 197-11-768(6) and -660(1)(b).
25. The Examiner may impose conditions necessary to make the application compatible with the environment and carry out applicable state laws, including SEPA, and the policies of the comprehensive plan and zoning code. KCC 20.24.080.B.
26. TUP Condition 7 should be revised to ensure that the required professional noise measurements capture a large event.
27. As conditioned, the TUP is not likely to create significant adverse environmental impacts.

#### KCC 21A.44.020.A and .B

28. KCC 21A.44.020.A requires that the proposed temporary use not be materially detrimental to the public welfare. KCC 21A.44.020.B requires that the proposed temporary use be compatible with existing land uses in the immediate vicinity in terms of noise and hours of operation.

29. Appellants have not borne their burden of demonstrating that DPER erroneously found that the proposal complies with KCC 21A.44.020.
30. The Examiner notes, however, that, in discussing these standards, DPER observes 20 days (the number of permitted events with one event occurring per day) constitutes less than 6 percent of a year. While this observation is accurate, it overlooks the fact that the 20 days are in May – October when neighbors and community members are most likely to be outside and/or have their windows open.

#### Purposes of Temporary Use

31. Appellants argue that the use is not, in fact, temporary and that “DPER’s willingness to issue successive temporary permits for a use not permitted in the RA zone effectively renders permanent what is only allow to be temporary.” *Currans’ Closing Argument*, p. 10. This is not the first appeal of a TUP in which an appellant has raised this concern.
32. However, KCC 21A.32.120 (2014) allows DPER to renew a TUP annually for up to 5 years if the applicant makes a written request and pays the applicable fees 70 days before the end of the permit period; DPER determines that the temporary use is being conducted in compliance with the TUP conditions; and DPER determines that the site conditions have not changed since the original TUP was issued. DPER must give notice to property owners within 500 feet of the property that the applicant has requested a renewal at least 45 days before the end of the permit period.
33. The King County Code allows a TUP to be renewed annually under the circumstances enumerated above. The Hearing Examiner does not have the authority to rewrite the Code.
34. Appellants have not borne their burden of proof on this issue.

#### Nuisance and Noise Code

35. Appellants made no showing that the events authorized by the TUP constitute a nuisance.
36. The TUP requires professional noise measurements and corrective measures if necessary to ensure compliance with the noise code. It further requires that amplified sound be terminated at 8 p.m. on Sundays and 10 p.m. on Fridays and Saturdays.
37. Appellants have not borne their burden of proving that, as conditioned, the TUP fails to comply with the noise code.

#### DECISION:

The appeal is **DENIED**. The Shooting Star Gardens Temporary Use Permit is **APPROVED** subject to the following conditions:

1. Use of the subject site is APPROVED in 2015 for 20 events to occur between May 1st and October 31st, with setup and removal of equipment as planned. This approval replaces the renewal of the previously approved TUP (TEMP14-0013).
2. This TUP may be renewed annually for up to 5 years in accordance with the provisions of KCC 21A.32.120. The applicant shall make a written request and pay the applicable permit extension fees for renewal of the temporary use permit at least 70 days before the earlier of (1) the end of the permit period or (2) the last of the events;
3. The applicant shall provide the department a list of all scheduled events for each month, including time and date for each event. This information shall be submitted on or before the 1st of each month preceding events.
4. There shall be no public use of the residence or any other structures on site for any TUP event at the subject site.
5. No activities or alterations within a designated critical area or its associated buffer are authorized by this action.
6. Event parking is only permitted on-site or across the street at the overflow parking location on designated areas. No event parking shall occur along public or private roads. The applicant shall utilize parking attendants as needed to direct the flow of traffic and parking. The applicant shall encourage carpooling by the wedding parties.
7. The applicant shall provide noise measurement levels for at least two events during season 2015. The noise measurement shall be taken by a professional noise consultant to accurately measure noise levels along the south property boundary. The study shall provide mitigation to lower noise levels along south property boundary if needed. The noise measurements shall be taken during a large and a typical size event. The result shall be presented to the department before the end of the season.
8. Noise complaints shall be directed to the King County Sherriff's Office at (206) 296-3311. Music venues shall not exceed maximum allowed sound levels at all property lines for the rural area. The applicant shall take full responsibility for maintaining supervision of the music on the subject property, taking appropriate action to ensure code compliance during all scheduled events.
9. Limits to wedding music programs shall be as follows:
  - a. Sunday events shall end music programs at 8:00 PM.
  - b. Friday and Saturday events shall end music programs at 10:00 PM.
  - c. All music and dancing shall occur within a tent enclosed on at least two sides, one of which shall be the south side. Any loudspeakers or other sound transmitting devices shall be positioned to minimize propagation of amplified sounds toward exterior property boundaries and adjacent residences. The applicant shall take full responsibility for maintaining supervision of live and recorded music on the subject property, taking appropriate action to ensure code compliance during all scheduled events.

- d. The applicant shall be prepared to monitor sound levels at all times. If noise complaints are received by the King County Sheriff, it will be necessary for the applicant to be prepared to immediately monitor sound levels. The applicant shall continue documenting and recording the music sound levels as in the past to monitor sound levels for compliance with the maximum noise level in the RA zone.
10. Use contracts shall be secured from all event vendors and participants. This is necessary to demonstrate that adequate provisions are in place to protect against excessive noise, alcohol consumption, traffic, and parking control.
11. All events food/beverage caterers shall be responsible for the removal of all event waste products from the site following an event. Additionally, caterers shall not clean equipment on site following an event. Caterers are responsible for bringing their own potable water to the site for event use.
12. Alcohol consumption is only permitted under Washington State laws. Event sponsors must obtain banquet permits from the State and may have licensed bartenders supervising alcoholic beverages.
13. The applicant is responsible for providing self-contained portable lavatories with hand washing systems to guests. The portable lavatories shall be regularly serviced during the event season.
14. No Food preparation is allowed on site unless an approval from the King County Health Department is obtained for food preparation on site. All foods must be prepared outside and delivered for the events. The applicant is responsible for any ancillary food handling and portable lavatory health permits, if necessary.
15. A Tent permit shall be obtained and a fire inspection shall be done prior to the start of events in the season.

ORDERED May 19, 2015.



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Alison Moss  
Hearing Examiner pro tem



## **NOTICE OF RIGHT TO APPEAL**

Pursuant to King County Code Chapter 20.24, the King County Council has directed that the Examiner make the final decision on behalf of the county on these appeal matters. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in superior court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

### **MINUTES OF THE MAY 5, 2015, HEARING ON THE APPEAL OF Shooting Star Gardens, PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. TEMP140012.**

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi for the department; Brian E. Lawler, representing the Applicant; Jeff Eustis, representing the Appellant; Marylou Ozbolt-Storer, Michael and Bonnie Curran and Barbara Jamison.

The following exhibits were offered and entered into the record:

- |                |   |
|----------------|---|
| Exhibit no. 1  | Department of Development and Environmental Services Response to Appeal Issues Report dated May 5, 2015                                       |
| Exhibit no. 1A | Revised pages 5 through 8 of DPER report  |
| Exhibit no. 2  | Department of Development and Environmental Services Threshold Determination of Non-significance dated December 29, 2014                      |
| Exhibit no. 3  | Environmental checklist dated June 25, 2014   |
| Exhibit no. 4  | Notice of Appeal filed by Aramburu & Eustis, LLP dated January 14, 2015   |
| Exhibit no. 5  | Pre-Hearing Order issued by the Hearing Examiner March 10, 2015   |
| Exhibit no. 6  | Department of Development and Environmental Services File No. PREA-140012   |
| Exhibit no. 7  | November 5, 2011 letter   |
| Exhibit no. 8  | Temporary Use Permit Report and Decision for B12M0207   |
| Exhibit no. 9  | IMAP/photo showing Storer parcels   |
| Exhibit no. 10 | Aerial of Curran property taken in 2012, annotated by Michael Curran showing proximity to Storer property facilities                          |
| Exhibit no. 11 | Photographs of Curran property showing fencing between Curran & Storer property, uncovered tent on Storer property and photo of wedding party |
| Exhibit no. 12 | Shooting Star Gardens webpage showing facilities available and a photo of an event at Shooting Star Gardens                                   |
| Exhibit no. 13 | Sound Readings recorded by Michael Curran in 2014 and site plan   |
| Exhibit no. 14 | 2013 Activity Table created by Michael Curran   |
| Exhibit no. 15 | 2014 Activity Table created by Michael Curran   |
| Exhibit no. 16 | 2015 Discrepancies Report   |
| Exhibit no. 17 | Supplemental Document Production by Appellant Shooting Star Gardens   |
| Exhibit no. 18 | Requests for Production No. 1.a and 1.b for 2012-2014   |
| Exhibit no. 19 | Requests for Production No. 1.c and 1.d for 2012-2014   |
| Exhibit no. 20 | 2012 Decibel Report on activities at Shooting Star Gardens  |

Exhibit no. 21	Curran's Sound Level Meter with Backlit Display
Exhibit no. 22	Sound Level Calibrator specs
Exhibit no. 23	Digital Sound Level Meter specs striking the handwritten notes
Exhibit no. 24	Table of Uses in the RA Zone from Title 21A - Zoning
Exhibit no. 25	Email dated October 6, 2014 and letter dated November 20, 2012 from Shooting Star Garden neighbors
Exhibit no. 26	One email dated October 6, 2014 and two Emails dated October 3, 2014 from Shooting Star Garden neighbors
Exhibit no. 27	Letter from Lila Henderson to "Whom It May Concern" dated October 5, 2014
Exhibit no. 28	Temporary Use Permit Report and Decision for TEMP140012
Exhibit no. 29	Photographs wedding event
Exhibit no. 30	Photographs of Storer property
Exhibit no. 31A	Page 3 of Shooting Star Event Gardens Contract re: Music levels
Exhibit no. 31B	Page 3 of Shooting Star Event Gardens Contract re: Maximum decibel level
Exhibit no. 32	Review of Shooting Star Event Gardens by YELP dated March 29, 2015
Exhibit no. 33	2014 calendar of events
Exhibit no. 34	2013 calendar of events
Exhibit no. 35	Requests for Production No. 1.e
Exhibit no. 36	Letter to Mr. & Mrs. Curran from Curran Law Firm dated July 31, 2013
Exhibit no. 37	Letter to John Casey from Jeffrey Eustis dated August 23, 2013
Exhibit no. 38	Letter to Fereshteh Dehkordi from Jeffrey Eustis dated October 1, 2014

The following exhibits were excluded from the record:

Photo – 2012 Notice of Application  
 Notice of additional events for Shooting Star Gardens  
 Storer letter to Michael and Bonnie Curran  
 Collection of Photos of Curran's Property

AM/gao

May 19, 2015

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**CERTIFICATE OF SERVICE**

SUBJECT: Permitting and Environmental Review File No. **TEMP140012**

**SHOOTING STAR GARDENS**

Temporary Use Permit Appeal

I, Ginger Ohrmundt, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.

DATED May 19, 2015.



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Ginger A. Ohrmundt  
Legislative Secretary II