



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER
GRANTING THE APPLICATION BY
MICHAEL GAINES FOR LANDSCAPE IRRIGATOR LICENSE;
TCEQ DOCKET NO. 2020-1596-LIC;
SOAH DOCKET NO. 582-21-1135**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Michael Gaines for a landscape irrigator license. A Proposal for Decision (PFD) was issued by Heather D. Hunziker, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), and considered by the Commission.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. In March 2020, Michael Gaines applied to the Commission for a Landscape Irrigator license.
2. On April 13, 2020, and June 11, 2020, the Executive Director (ED) of the Commission notified Mr. Gaines that his application to be a landscape irrigator would be denied based on his criminal history.
3. The ED sent a notice of hearing to Mr. Gaines dated January 26, 2021, at his address of record with the Commission.
4. The notice of hearing provided the date, time, and place of a preliminary hearing; the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
5. On March 4, 2021, ALJ Heather D. Hunziker convened the preliminary hearing via videoconference; admitted ED Exhibit 5 for the limited purpose of establishing notice and jurisdiction; and entered a procedural schedule, pursuant to the parties' agreement, for a hearing to be held July 8, 2021 via videoconference.
6. On July 8, 2021, the ALJ convened the hearing on the merits via videoconference. Mr. Gaines represented himself. Staff Attorney Alicia Ramirez represented the ED. Amanda D. Pesonen represented the Office of Public Interest Counsel.
7. The ALJ gave the parties until July 16, 2021, to submit exhibits; until July 29, 2021, to file closing briefs and objections to any exhibits filed post-hearing; and until August 5, 2021, to file replies to closing briefs. The last reply was filed August 2, 2021, and the record closed that day.
8. In July of 2001 and again in October of 2003, Mr. Gaines was convicted of Class B misdemeanors for evading arrest.
9. In July of 2005, Mr. Gaines was convicted of a Class A misdemeanor for possession of prohibited weapons and a Class B misdemeanor for possession of marijuana (less than 2 ounces).
10. In August of 2005, Mr. Gaines was convicted of two counts of third degree felony for assault causing bodily injury with family violence enhancement.
11. In August of 2010, Mr. Gaines was convicted of a Class A misdemeanor, for assault causing bodily injury, and two Class B misdemeanors—for evading arrest and for possession of marijuana (less than 2 ounces).

12. In September of 2011, Mr. Gaines was convicted of a state jail felony, for attempting to take a weapon from an officer, and two third degree felonies—for assault on a police officer and for obstruction or retaliation.
13. For each of his crimes, Mr. Gaines was sentenced to confinement; and for most of his crimes he was additionally ordered to pay a fine and/or court costs.
14. Mr. Gaines’s most recent period of imprisonment ended January 7, 2014, when he was released on parole to a halfway house.
15. At the times of his crimes, Mr. Gaines ranged in age from 17 to 26.
16. Mr. Gaines is now 37 years old.
17. Landscape Irrigators have access to persons at residences or businesses in situations that could have a potential for confrontational behavior related to crimes against persons.
18. Felony assault is a serious offense, and a crime against persons.
19. Felony assault directly relates to the duties and responsibilities of a Landscape Irrigator.
20. Ten years have passed since Mr. Gaines’s last conviction.
21. Mr. Gaines has maintained continuous employment since his release from prison, mostly in landscaping, and has been with his current employer for over a year.
22. Mr. Gaines completed his prison sentences.
23. Mr. Gaines provided letters of recommendation from his current work manager and housing manager; certificates of “Employee of the Month” and “Crew of the Month” for August 2020 and June 2021, respectively; and a 2021 work performance evaluation with all “solid” or “excellent” ratings.
24. Mr. Gaines has taken irrigation classes to become a Landscape Irrigator.
25. Mr. Gaines is penitent and does not have a temper.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction and authority over Landscape Irrigator licensing decisions. Tex. Water Code ch. 37; 30 Tex. Admin. Code § 30.1, et seq.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this case, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov’t Code ch. 2003; 30 Tex. Admin. Code §§ 30.38, 80.1, et seq.

3. Mr. Gaines received proper notice of the petition and of the hearing on the merits. Tex. Occ. Code § 53.0231; Tex. Gov't Code §§ 2001.051-.052.
4. Mr. Gaines has the burden of proving by a preponderance of the evidence that he is fit for licensure despite his criminal history. 1 Tex. Admin. Code § 155.427; 30 Tex. Admin. Code §§ 80.17(a), 80.117(b).
5. Mr. Gaines has the responsibility, to the extent possible, to obtain and provide to the ED letters of recommendation and other evidence of his fitness. Tex. Occ. Code § 53.023(b); 30 Tex. Admin. Code § 30.34(c).
6. Mr. Gaines was convicted of felony assaults, which are above a Class C misdemeanor. Tex. Pen. Code § 22.01(b).
7. Mr. Gaines's felony assault offenses directly relate to the occupation of Landscape Irrigator because they are crimes against the person, and the license might offer an opportunity to engage in further criminal activity of the same type. Tex. Occ. Code § 53.022; 30 Tex. Admin. Code § 30.34(a)(3); *and see* Commission Guidelines RG-521, "Consequences of Criminal Convictions for Occupational Licensing" 2, 11.
8. The Commission must consider many factors to determine whether Mr. Gaines is fit to hold a Landscape Irrigator license despite his criminal history. Tex. Occ. Code §§ 53.022-.023; 30 Tex. Admin. Code § 30.34.
9. Mr. Gaines satisfied his burden to prove his fitness for the license despite his criminal history. He testified and presented documentary evidence including letters of recommendation and employment certificates. Tex. Occ. Code § 53.023; 30 Tex. Admin. Code § 30.34(b)(7).
10. Mr. Gaines has demonstrated his fitness to be a Landscape Irrigator. Tex. Occ. Code § 53.023; 30 Tex. Admin. Code § 30.34.
11. Based on the evidence and consideration of the required factors, Mr. Gaines's application for Landscape Irrigator license should not be denied.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The Application by Michael Gaines for a Landscape Irrigator's license is granted.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

3. The effective date of this Order is the date the Order is final, as provided by Texas Government Code § 2001.144 and 30 Texas Administrative Code § 80.273.
4. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.
5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Jon Niermann, Chairman for the Commission