

Town of Iron Gate

P.O. Box 199, 401 Commerce Avenue
Iron Gate, VA 24448
Office (540) 862-0770
March 30, 2023 Minutes

Invocation was given by Reverend David Hanks of the Iron Gate Baptist Church.

The Pledge of Allegiance

The regular Town Council meeting of Thursday, March 30, 2023 was called to order by Mayor Craig at 7:02 pm.

PRESENT: Mayor Gary Craig, Vice Mayor Council Member Richard Erskine, Council Members Debbie Harris, Jennifer Tyree and G.W. Reynolds; Town Clerk & Treasurer Wendy Biggs and Town Attorney Jared Jenkins. Also present were Jerry Clark with the Alleghany Journal; Jimmy Jeffries and Brandon Marshall. Councilperson Kawahna Persinger was absent.

Mayor Craig thanked those in attendance for coming to the meeting. He then began by asking if there were any corrections to be made in the minutes for the regular monthly meeting held on Thursday, February 23, 2023 or for the work session held on March 20, 2023; there were none. Mayor Craig then asked for a motion to approve the minutes for the Council meeting and work session as presented. A motion was made by Vice Mayor Councilperson Erskine to approve those minutes as presented and second by Councilperson Tyree. With no further questions or comments, Mayor Craig asked for all of those in favor of approving the minutes as recorded to say "I". All four (4) Councilmembers in attendance stated "I". The motion was carried and approved.

Mayor Craig asked if anyone had any questions about the disbursements and receipts of the bills in their packet. With no questions, Mayor Craig then noted that there were three (3) bills to add; the first is to Compton Office for \$30.00 for the all in one machine; the second is to Lumos for \$185.92 and the last is to Northwest Hardware for \$112.41. Mayor Craig then asked for a motion to approve the receipts and disbursements of the bills. A motion was made by Vice Mayor Councilperson Erskine to approve the payment of the bills as presented and was second by Councilperson Tyree. Mayor Craig then asked for all those in favor of approving the disbursements and payment of the bills as presented to say "I". All four (4) Councilmembers in attendance stated "I". The motion was carried and approved.

Mayor's Report:

Mayor Craig reported that the trees along Market Avenue were removed due to sightline issues and replanted at the River Park. He thanked Clifton Forge for helping us out in that process and stated that the flower beds will be dressed up in the coming weeks.

Mayor Craig thanked Mr. Jeffries and Pastor Hanks for being interested in the Town and coming to the meetings. It takes a community effort to be able to run the Town and watch it move forward.

Some may have noticed that we have had the Sheriff's Department patrolling here more often now and it's great to see them and to see them handing out tickets.

Mayor Craig announced that there were two (2) Proclamation Signings in Covington; one for the month of April being Clean-Up Month in the Highlands and they are asking that everyone who is able to try and pick up at least one bag of trash between April 16th and April 27th. We will place our dump trailer throughout the Town of Iron Gate during the month of April. Mrs. Biggs will reach out to Scott Unroe and see if they can place the trailer on the edge of the lot across from his house at the corner of 9th Street and Commerce Avenue. The other signing was for National Crime Victim's Rights Week during the week of April 23rd through the 29th.

Committee Reports:

Councilperson Tyree noted that the Neighborhood Watch sign was missing near the corner of 10th Street and Market Avenue. Mayor Craig will contact Chris Fisher, who's in charge of the program and let him know.

Councilperson Harris had explained at the work session how concerned she was for a neighbor who had health issues and pets. She is glad to see and report that now there is someone there almost every day to care for the neighbor and the pets.

Public Comments:

None.

Old Business:

Mayor Craig explained that we had received a letter of resignation from Councilperson Mikki Curtis on February 24, 2023. He then read her letter and noted that Council will need to vote on accepting her resignation under New Business. Mayor Craig noted that he was sure we all understood where she was coming from; she has a daughter who is actively involved in dance and different sports and she needs and should be there for her.

With that said, we need to fill her vacant seat. We have received one letter of interest and it's from Brandon Marshall, who is here with us tonight. Mayor Craig then read his letter of interest and asked Mr. Marshall if he wanted to say anything. Mr. Marshall spoke, stating that he was interested in small Town government and how it works; adding that he hopes that he will be able to help the Town and its residents. Mayor Craig noted that Mr. Marshall does work for Norfolk Southern and that there may be times where he cannot get away from work, especially in the summer. However, he will make every effort to be here. He also has a wife and three children, one of which is a newborn. Mayor Craig then asked if Council had any questions for Mr. Marshall. Councilperson Harris if Mr. Marshall has ever served on any boards or committees and Mr. Marshall replied that he has not, but that he looks forward to learning and serving. Mayor Craig then reminded Council that they will vote on accepting Mr. Marshall for the Council seat under New Business.

At the work session we received a donation letter in the mail for the YMCA After Prom. The letter was read and there was a discussion about giving a donation to the YMCA After Prom for both High Schools this year. We will hold a vote under New Business on whether or not to give any donations.

Mayor Craig then asked Town Attorney Jared Jenkins to update Council on the Jennifer Simpson case. Mr. Jenkins explained to everyone that there were two (2) developments in the case and noted that the hearing for damages is scheduled for April 26, 27 and 28. On Monday there was a pretrial conference with Judge Stein and all of the attorneys involved. One of the items brought up in that meeting was regarding the motion by the Town for Judge Stein to recuse himself from hearing the case. As a reminder, the issue originally was that Ms. Simpson's property at 305 Market Avenue would intermittently flood (that is past tense) throughout the years and in early 2019, the Mayor at that time, Chuck Unroe, explained to Mrs. Simpson that the Town would fix the issue. The Town then allocated \$20,000.00 to completely replace the line to Ms. Simpson's specifications. We proceeded with the process and didn't hear from her for a while and the Town ultimately held a meeting where they decided if they didn't hear from her, then they would just do the project- the money has been allocated; we have the contractor; we will fix the issue and everyone can move on. Soon thereafter we heard that she had a hired an attorney from Norfolk who specializes in eminent domain and they asserted that fixing the problem wasn't sufficient. It was noted that the Town needed to go above and beyond that and pay her \$25,000.00 for being in her yard for a period of time. The attorney for Ms. Simpson also threatened that if the Town did not comply, then they would be sued and have to pay an extraordinary amount of legal fees. Mr. Jenkins stated that he believes that they were thinking that the Town would just pay the \$45,000.00 and avoid court and litigation. It was advertised at the time as the "possible imposition of the Jennifer Simpson Tax" because the Town did not have the money then, nor does it have it now, to pay the \$45,000.00, much less scraping together the \$20,000.00 to fix the problem in the first place. It was called the Jennifer Simpson Tax because it was her choice; her choice to bring this attorney in; her choice to sue the Town; her choice to essentially force all of the citizens of Iron Gate to pay her for what she has chosen to do, when the Town who had already allocated the money without having to raise

taxes or hold public meetings, to her specifications. A public hearing was held on stormy Halloween night in 2019 in regards to all of this. The result of that Public hearing was that it was decided that the Town would not pay one cent more than the \$20,000.00 that was allocated to fix the problem and she needs to come to her senses. Fast forward to October 2021, we ended up having a trial on whether or not the Town was responsible for the flooding of her property and for her damages. Ultimately Judge Stein ruled against the Town from things that took place in that hearing. However, in the end of that hearing, Judge Stein said (and we're getting to this because this is the basis for the motion for Judge Stein to recuse himself and it also is being read for Council to be able to decide how the Town wants to proceed) "that will be the court's ruling". (The exact excerpt is attached for your review). It was also offered in evidence at the trial that Town had tried to work with her for about a year to fix this issue. It's ridiculous to say that this is all of the Town's fault when the Town had allocated the money, had the contractor and was shovel ready to do the project and the Judge to sit there and still say that this was all the Town's fault. At the pretrial conference on Monday, Mr. Jenkins stated that he had filed the motion to recuse, basically saying that Judge Stein has obviously stated his personal bias against the Town; "If I could punish you, I certainly would". At the pretrial meeting on Monday, Judge Stein does not back away from any of it- only speaking back again if this part was a legal action or a tort action. He had more or less also stated that he had reviewed his conscious and felt that he could give an unbiased and impartial trial and not only that, Mr. Jenkins stated that Judge Stein forgets how his actions are perceived towards the public in his "unbiased" actions. He should be considering the fact that going on the record in public, saying that he would punish the Town if he could, will make the Town question whether there is going to be a fair trial; therefore questioning also if this whole process is legitimate. All of this was said and done right after Judge Stein had found the Town liable and right before he set a damages trial. Mr. Jenkins commented that he only said what he thought needed to be said for the Town and for the motion; but it was clear where he was coming from and it could only help our case when Judge Stein essentially stated on Monday that he meant what he said, but he could still be unbiased. Mr. Jenkins went on to explain to the Council that there were a couple of things to look at; the first is that all of this is potentially grounds for appeal. The law states that it is up to the judge on whether or not to recuse himself; so we clearly have multiple grounds for appeal based on the statements he had made on the record and claims that he can be unbiased, but obviously is not. Now we have grounds that we can make a motion to recuse. The Town could let this issue lay and still go through the damages hearing, with Judge Stein coming down here and viewing the property with the jury; going back to the courthouse and hearing the evidence, ruling on it and see what happens and go through that process. At some point we would get a final order and then appeal. Or we can file a motion to reconsider, which means the Judge has to look at the motion and reconsider his decision. At this point, Mr. Jenkins feels that the Town should officially respond and see if Town Council would like to draft a resolution that in the Town's view, that this raises questions whether or not the Town is getting a fair trial and we can discuss what the Town would want that resolution to say. This would be an affirmation that it's not just the Town Attorney saying it's wrong, but the Town also thinks it's wrong as an official body. We would attach that resolution to the motion to reconsider and say that we understand Judge Stein's position, but this is how we see things as a Town. In doing this, Mr. Jenkins believes that this will not change anything, but instead we will be on the record so that when

we do end up appealing, we can say ultimately to the Supreme Court that the Town as an entity perceives this to be an unfair and questions whether a fair trial was received. If this is what Council would like to do, then the exact language can be discussed and Mr. Jenkins will draft something up. Since there is a work session for April, we wouldn't have to do a whole new meeting for this, we can just do it at the work session, with proper notification for the public as a Special Meeting. A vote can be taken and the motion to reconsider can be filed.

Mayor Craig then asked when the trial was set to take place; Mr. Jenkins replied at the end of April. The work session would take place on April 17th and the April Council meeting would be April 27th. Councilperson Harris had a couple of questions: the original \$20,000.00 that was allocated for the fix, there was nothing actually done, correct? Mr. Jenkins replied that was correct. So, it was all set up and no action taken? Again, Mr. Jenkins replied that was correct. Councilperson Harris then asked if the water problem was corrected. Mr. Jenkins responded that yes, the Town's daily drive by's on the property even during extremely heavy rains, has shown that there has been no flooding since any of this took place. Councilperson Harris the questioned if Ms. Simpson resides at the property and Mr. Jenkins said that he believes that she has renters, possibly family members, and she no longer actually lives on the property, but still owns it. The additional amount of \$45,000.00 was what she was asking for, correct, questioned Councilperson Harris. Mr. Jenkins explained that was correct in essence and whether or not it will go up, depends on their claim of damages for the case, which Mr. Jenkins just received the day before. We can go into that a bit more after we talk about the recusal. Ms. Simpson's total claim for damages is roughly \$37,000.00; that is the Town leaving the issue as it is and the Town allegedly flooding the property every now and then. The biggest part of that is \$30,000.00, which she feels is the depreciation value of the house if and when she sells it because she has to tell people that it floods, but we can discuss that further. The law firm that she hired from Norfolk, noted in several filings ago, claim that they should be reimbursed about \$144,000.00. Once we get to the trial, they will likely state that we owe them \$200,000.00 and this all leads back to the recusal because who decides how much to pay and what a reasonable amount to pay would be Judge Stein. There will be a jury for the damages part of the case and Councilperson Harris commented that if Judge Stein speaks in a biased way, then that will influence the jury. Mr. Jenkins stated that we will appeal, but we do not have the right to appeal until we finish going through the process. Mayor Craig then asked if anyone had any other questions for Mr. Jenkins; Councilperson Tyree questioned if former Mayor Chuck Unroe will need to go back to testify. Mr. Jenkins replied that he will not have a lot to testify about in the damages part it's noted that Ms. Simpson didn't ever give a list of damages; he did in the liability part more. This sort of leads to the next issue as to what they're claiming to damages.

In theory, the Town was thinking that what was pushing Ms. Simpson was the damage to personal property; she claimed that she burned up two (2) sump pumps trying to get the water out and she has some damaged fence posts and the appraiser actually values her personal property damages at \$2,100.00. Mr. Jenkins went to say that he feels the Town at the time would have likely figured out how to give her \$2,100.00 for her personal property damages (even if it wasn't in the budget) and still fixed the line issue as they had agreed to if Ms. Simpson would have presented that to Council. Instead, she hired this particular lawyer and

here we are. Another part of this is that she may possibly testify at the damages trial to line by line of the items and even though the Town may feel that \$2,100.00 is a bit too much for those items, the Town Council could say that they agree to pay her the \$2,100.00 for those items and avoid all that time going over each item. They may not take that, but it would show good faith on the part of the Town to pay her for her damages. They also value her case by saying that her property was appraised at \$120,000.00; it is important to note that any tax appraisal by the Town or county is not admissible in any court of law and it is at \$60,000.00. She herself paid \$73,000.00 in 2013 according to the deed and by 2017 they have the property valued at \$120,000.00- that's four (4) years. Somehow her property appreciated that much in just 4 years. Mr. Jenkins believes that a jury is not going to see that as a reasonable starting point in the process; but for our purposes in this conversation, let's say they do value it at \$120,000.00. They find that water was on the property about 3% of the total time that we are looking at and that comes to about \$4,000.00, so we are up to \$4100.00. The \$30,000.00 from the argument that if and when she sells the property that she will have to tell the person purchasing the property that not only does it flood, that the Town (under the theory) can flood it at any time, for any duration, without any notice and that the Town has no obligation to pay her and that if she does it, the new owner will have to go through this process and take the Town to court before the Town will pay that person. The other abstract ideas of this is that if the Town will keep flooding it and the new owner will have to take the Town to court to recoup any money. The other fact is that her lawyer makes no mention that the Town had offered to fix it; had actually hired someone and was ready to go to fix the problem for \$20,000.00. All of this will be considered and brought up in the damages part of the trial and Mr. Jenkins noted that he will cross examine their realtor in regards to how much the property is worth and determining factors. In essence, they're saying that even though the property is worth \$120,000.00, she would only be able to get \$90,000.00 because of the water issue. If she walks away from the damages trial as a complete winner on everything, she will get \$37,000.00. After the damages trial, her attorney will have to come up with a reasonable amount (and that is by statute) owed to the attorney. They will have to, by law, show where Ms. Simpson has paid that amount of money, about \$150,000.00, to her lawyer. It calls for a reasonable amount of reimbursement by law and it has to be shown to us that she has paid them; so far we have not received that information. The argument for this is was it reasonable for her to spend \$200,000.00 in order to receive \$37,000.00; Mr. Jenkins noted that this is not realistic. The exposure to the Town of course, is that there is a finding for her in the amount of \$237,000.00 that we would need to pay her. Mr. Jenkins did stress that at some point, common sense and reason has to prevail in this case. In essence, Ms. Simpson and her lawyer have made this case a huge deal, when it had originally been decided that a contract would be awarded and the project would take place. They made it an extortion in a sense, to get as much out of the Town as possible even though the Town was already willing to fix the problem. This is not how any of this should work and so tonight, Mr. Jenkins reminded Council that he was looking to see if they wanted to file the motion to recuse with the assumption that we would still be moving forward with the damages trial in April and we can go from there. Councilperson Tyree asked if we could ask for the venue to be moved; Mr. Jenkins explained that it couldn't be because it was all tied to the land. He believes it could hurt us to move it and that our best bet is to have a handful of jurors from

Alleghany County come down and look and be reasonable; that this is not how we do things in Iron Gate or Alleghany County.

Mayor Craig then asked Council for a motion to have Mr. Jenkins file a motion to have Judge Stein reconsider the recusal. Councilperson Harris made the motion to have Mr. Jenkins file a motion to have Judge Stein reconsider the recusal. Vice Mayor Councilperson Erskine second the motion. With no more discussion or questions, Mayor Craig took a roll call vote:

Debbie Harris: Yes
Jennifer Tyree: Yes
Kawahna Persinger: Absent
G.W. Reynolds: Yes
Richard Erskine: Yes

The motion was carried and approved. Mr. Jenkins noted that now there will be a Special Meeting held before the work session begins to vote on a resolution, which would then be attached to the motion to reconsider.

The second issue is whether to consider the \$2,100.00. Mayor Craig then asked Council for a motion to have Mr. Jenkins present papers that the Town would be willing to pay Ms. Simpson \$2,100.00 for personal property damages. Councilperson G.W. Reynolds made the motion to have Mr. Jenkins present the papers that the Town would be willing to pay Ms. Simpson \$2,100.00. Vice Mayor Councilperson Erskine second the motion and with no further discussion or questions, a roll call vote was taken:

Debbie Harris: Yes
Jennifer Tyree: Yes
Kawahna Persinger: Absent
G.W. Reynolds: Yes
Richard Erskine: Yes

The motion was carried and approved. It will be advertised as a Special Meeting to be held on April 17th before the work session.

Mayor Craig asked if there was any other old business. Councilperson Tyree asked if Council needed to vote on which engineering firm was going to do our water project. Mayor Craig noted that we are in the process of reviewing and signing the general agreements for each firm to be working with the Town and once that is done, we will move forward.

Mayor Craig then asked if there was any other old business; with no other Old Business to be discussed, Mayor Craig moved into New Business.

New Business:

Mayor Craig reminded Council that the resignation letter was read earlier under Old Business from Mikki Curtis. He then asked for a motion to accept her resignation. Vice Mayor Councilperson Erskine made the motion to accept the resignation of Mikki Curtis and Councilperson Reynolds second the motion. A roll call vote was then taken:

Debbie Harris: Yes
Jennifer Tyree: Yes
Kawahna Persinger: Absent
G.W. Reynolds: Yes
Richard Erskine: Yes

The motion was carried and approved.

Mayor Craig then announced that there was one letter of interest for the Council seat that was Mikki Curtis'. He then asked for a motion to accept the letter of interest for Brandon Marshall to fill Mrs. Curtis' Council seat. Vice Mayor Councilperson Erskine made the motion to accept Mr. Marshall for the Council seat and Councilperson Harris second the motion. With no further comments, questions or concerns, a roll call vote was taken:

Debbie Harris: Yes
Jennifer Tyree: Yes
Kawahna Persinger: Absent
G.W. Reynolds: Yes
Richard Erskine: Yes

The motion was carried and approved. Mrs. Biggs will get things ready for Mr. Marshall to be sworn in. Mayor Craig thanked Mr. Marshall for stepping up.

Mayor Craig then discussed the item of donations. Mayor Craig noted that he is all for the YMCA After Prom donation, even if we may not have it. We had to take a hard look at it and if we do not have the money for our employees for raises and other bills and emergencies. Unfortunately we do not have the funds at this time, but at some point we will. Vice Mayor Councilperson Erskine made the motion to not give any donations and Councilperson Harris second the motion. A response of "yes" means you are in favor of NOT giving any donations. A roll call vote was then taken:

Debbie Harris: Yes
Jennifer Tyree: Yes
Kawahna Persinger: Absent

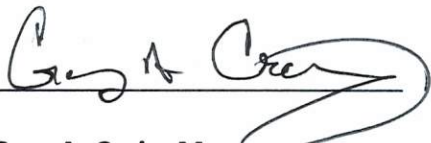
G.W. Reynolds: Yes
Richard Erskine: Yes

The motion was carried and approved.


Mayor Craig then noted that the next work session will be on April 17th with a Special Meeting to be held before the work session at 7:00pm and the next Council Meeting will be April 27th, also at 7:00pm. The Town offices will all be closed on April 7th for Good Friday and will reopen on Monday, April 10th.

Councilperson Tyree asked when the first budget meeting will take place. Mayor Craig and Mrs. Biggs responded that they were waiting for the water rates and they should be out soon.

There being no further new business to be discussed, a motion to adjourn was made by Councilperson Tyree and second by Councilperson Reynolds at 8:03pm. Mayor Craig then asked all of those in favor of the adjournment to say "I". All four (4) Councilmembers in attendance stated "I".



Gary A. Craig, Mayor



Wendy S. Biggs, Clerk

1 cleaned their pipes in 2019, it solved the problem.

2 Now, that's disputed by Miss Worley, who
3 said she continued to have floods after that. But the
4 Town's position has been that VDOT needs to keep,
5 basically, the outlet open and the problem will be
6 solved. And that's true as far as it goes, but that
7 doesn't give the Town the right to say: Well, if VDOT
8 doesn't do what they're supposed to do, then we're just
9 going to throw up our hands and then the water will
10 just go onto Miss Worley's.

11 So what they have essentially done is
12 allowed Miss Worley's property to be used as the
13 overflow during periods of time that the stormwater
14 system does not properly flow. That is a taking, by --
15 is to me a taking and it has existed for at least three
16 years prior to the filing of the lawsuit.

→ 17 That will be the Court's ruling.

18 I just need to say, we heard a lot here
19 that's probably not really relevant, and I don't want
20 to go into all the back-and-forth about why things
21 broke down and how things broke down because I don't
22 think it's relevant to the case.

23 But I do need to tell you, having been
24 involved in local government in one form or another for
25 a number of years, having obviously been a citizen and

1 a voter for a lot of years, that the Town's conduct in
2 placing this advertisement in the paper and referring
3 to this as the "Jennifer Simpson Tax" and suggesting
4 that if they had to raise taxes to solve a stormwater
5 problem that the Town has had and known it has had
6 since 2011, that somehow that was going to be on her,
7 the embarrassment and the shame that they put her
8 through in doing that, quite frankly, the Town is lucky
9 that this case sounds in contract and not in tort,
10 because if it was in tort, that advertisement alone
11 would have supported punitive damages.

12 The Town and everyone who was involved in
13 that advertisement should be absolutely ashamed of
14 themselves.

15 And no matter what happens ultimately
16 with regard to damages, I would hope the Town would
17 have the decency at some point to apologize to her for
18 treating one of your Town citizens in that manner.

19 It's shameful. There's no excuse for it.
20 No excuse has been offered today for it, and it was
21 totally uncalled for.

22 But as I read the Code, at this point,
23 there's a 60-day period for the parties to try to
24 determine damages before we set a hearing on damages,
25 is my understanding.