

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
APRIL 2, 2007**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Mark Williams, Commissioner Chuck McGrady, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Fire Marshal's Administrative Assistant Cathy Justice, Planning Director Anthony Starr, Finance Director J. Carey McLelland, Deputy Clerk to the Board Terry Wilson, Interim County Engineer Marcus Jones, Associate County Attorney Sarah Zambon, Planner Matt Cable, and Health Director Tom Bridges.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

Commissioner Williams led the Pledge of Allegiance to the American Flag.

INVOCATION

Assistant County Manager Selena Coffey gave the invocation.

INFORMAL PUBLIC COMMENTS

There was no public input.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested one addition to the Discussion items, Regional Airport. The manager of the Asheville Regional Airport, Dave Edwards would be arriving to discuss their plans and other issues previously discussed regarding the airport authority.

There were no other changes suggested.

Commissioner McGrady made the motion to approve the agenda as revised above. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner McGrady made the motion to approve the consent agenda. All voted in favor and the motion carried.

Minutes

Draft minutes were presented for the Board's review and approval for the following meetings:

March 12, 2007

March 21, 2007

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated March 23, 2007, for the Board's review and consent approval.

County Financial Report/Cash Balance Report – February, 2007

DATE APPROVED _____

These two reports were presented for the Board's review and consent approval.

Non-Departmental costs include insurance premiums paid to date for Property and Liability insurance coverage and Worker's Compensation costs. These costs are being allocated out to all departments on a pro rata basis during the fiscal year.

The current YTD deficit in the Emergency 911 Communications Fund is due to the purchase of new technology and equipment during the first quarter that was budgeted in the current fiscal year and paid for from unreserved fund balance appropriated in this Fund.

The YTD deficit in the CDBG-Scattered Site Housing Project is temporary due to timing differences in the expenditure of funds and the subsequent requisition of Federal and State grant funds to reimburse project expenditures.

The YTD deficit in the Mills River Elementary School Project includes architectural fees that have been paid on the project to date that will be reimbursed from the issuance of debt in the future.

The YTD deficit in the Balfour Automotive Training Center Project will be paid from sales tax refund proceeds which have accumulated in the School Capital Projects Fund.

The YTD deficit in the Solid Waste Landfill Fund is due to construction expenditures incurred on the new transfer station project. The total cost of this project is being paid from \$1.8 million of unreserved fund balance appropriated in this Fund.

Henderson County Public Schools Financial Report – February, 2007

This February report was presented for the Board's review and consent approval.

EMS Accounts Receivable Report

This report was provided for the Board's review and consent approval.

CJPP Grant Application

This Grant Application was provided for the Board's review and consent approval.

If the Board is so inclined, the following motion was suggested:

I move that the Board of Commissioners approve the CJPP application as presented and direct the County Manager to evaluate the benefits of including County Funding in the upcoming FY 2007-08 budget for the Pre-Trial Release Program.

Improvement Guarantee Applications & Extensions

Mr. Jeff Cosgrove and Mr. Jim Armour, owner and developers, submitted an improvement guarantee application for the Summit Springs major subdivision. Summit Springs is a 174 single-family lot subdivision located off Interchange Drive. The improvement guarantee application is proposed to cover road construction which includes paving, the off-site water line extension and on-site water system improvements for lots 147-149 (Phase I). The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$415,208.75 to cover the cost of the improvements (\$332,167.00) as well as the required twenty-five percent (25%) contingency (\$83,041.75). July 31, 2007 is the proposed completion date of the improvements.

Mr. Norman Divers, agent for owner, requested a second extension for the Blacksmith Run subdivision improvement guarantee. The last extension required that the developer install a wastewater treatment plant by April 7, 2007. Mr. Divers has requested to extend the improvement guarantee to October 1, 2007.

Mr. A.J. Ball agent for owner of the Pinnacle Falls Renaissance subdivision requested to extend the completion dates of two improvement guarantees for Pinnacle Falls. Mr. Ball has requested a twelve (12) month extension for both improvement guarantees. Staff extended the completion dates in the attached performance agreements to the maximum extent allowed under Section 170-39 of the Subdivision Ordinance.

If the application and extensions are approved, the developers must submit irrevocable letters of credit in accordance with the terms of the Agreements. Once the County receives the letters of credit in proper form, the relevant parties must execute the Agreements.

If the Board is so inclined, the following motion was suggested:

I move that the Board of Commissioners find and conclude that the request for an improvement guarantee and requested extensions comply with the provisions of the Subdivision Ordinance and is approved.

Jackson Park BMX track lease

This lease would continue in effect the standing lease with the National Bicycle League, Inc. (“NBL”), for the operation of the “BMX” track located at Jackson Park. NBL has constructed and maintains the track, and operates and supervises “BMX” events there.

If the Board is so inclined, the following motion was suggested:

I move that the Board approve the lease for the “BMX” track at Jackson Park with National Bicycle League, Inc., and authorize the Chairman and staff to take such actions necessary to execute the same for the County.

Consolidated Contract Agreement with the NC Department of Health and Human Services

Each year, as part of the normal budgetary process, in order to keep the funding cycles without disruption of federal and state funds, the Consolidated Agreement with the NC Department of Health and Human Services is signed ahead of the final county budget. It was understood by the State Division of Public Health that the Local budgets are still being negotiated and would be finalized at a later date. It was also understood that program service levels and funding support can be renegotiated as necessary. This agreement contains items that include:

- Business Associate Agreement re: HIPAA compliance
- Assurance of Compliance with Title VI, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments, and the Age Discrimination Act
- Four Certification Forms re: Lobbying, Drug-Free Work Place and Environmental Tobacco Smoke, and Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion – Lower Tier Covered Transactions
- Agreement Addenda
- Maintenance of Effort (MOE) Report for WCH Programs
- Public Health Nurse Training Funds Reimbursement Request

If the Board is so inclined, the following motion was suggested:

I move that the Board of Commissioners adopt the Consolidated Contract Agreement for Fiscal Year 2008 between the NC Department of Health and Human Services and the Henderson County Department of Public Health be approved with the understanding that program service levels and funding support can be renegotiated as necessary.

Proclamation for National Day of Prayer

The following proclamation was recommended for the Board of Commissioners’ consideration:

WHEREAS, National Days of Prayer have been part of our country’s heritage since the first one was declared by the Continental Congress in 1775; and

WHEREAS, 2 Chronicles, Chapter 7, verse 14 reads “If my people, which are called by my name, shall humble themselves, and pray, and seek my face, and turn from their wicked ways; then will I hear from heaven, and will forgive their sin, and will heal their land”; and

WHEREAS, leaders of our Nation have relied upon the power of prayer throughout American history; and

WHEREAS, May 3, 2007, marks the 56th consecutive observance of the National Day of Prayer, as mandated by both Congress and by our President in Public Law 100-307; and

WHEREAS, it is good that we acknowledge that we are all God’s handiwork and that it is appropriate to call upon Him in prayer; and

WHEREAS, “America, Unite in Prayer” is the theme for the 2007 National Day of Prayer;

NOW, THEREFORE, I William L. Moyer, Chairman of the Henderson County Board of Commissioners, do hereby proclaim May 3, 2007 as a “**Day of Prayer**” in Henderson County and urge our citizens to join together in homes, places of work and places of worship, to pray for the unity of the hearts of all mankind, and to continue in prayer for our Nation.

William L. Moyer, Chairman
Henderson County Board of Commissioners

Attest:

Elizabeth W. Corn, Clerk to the Board

If the Board is so inclined, the following motion was suggested:

I move that the Board approve the Proclamation designating May 3, 2007 as the National Day of Prayer.

NOMINATIONS

Nominations

Chairman Moyer reminded the Board of the following vacancies and opened the floor to nominations.

- 1. Adequate Public Facilities Task Force Charter – 1vac.**
There were no nominations at this time so this item was rolled to the next meeting.
- 2. Blue Ribbon Committee on Illegal Immigration – 1 vac.**
There were no nominations at this time so this item was rolled to the next meeting.
- 3. Child Fatality Prevention Team – 1 vac.**
There were no nominations at this time so this item was rolled to the next meeting.
- 4. Fletcher Zoning Board of Adjustment – 1 vac.**

Commissioner Messer nominated Don Rhodes. *Chairman Moyer made the motion to accept the nominee by acclamation. All voted in favor and the motion carried.*

5. Henderson County Planning Board - 3 vac.

Commissioner Williams nominated Renee Kumor to position #1 and Jonathan Parce to position #3 for reappointment. Commissioner Young nominated Gary Griffin to position #9 for reappointment. *Chairman Moyer made the motion to accept the three nominees by acclamation. All voted in favor and the motion carried.*

6. Henderson County Zoning Board of Adjustment –1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

7. Hendersonville City Board of Adjustment – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

8. Juvenile Crime Prevention Council – 5 vac.

There were no nominations at this time so this item was rolled to the next meeting.

9. Library Board of Trustees – 1 vac.

Commissioner McGrady nominated Elizabeth Black. *Chairman Moyer made the motion to accept the nominee by acclamation. All voted in favor and the motion carried.*

10. Nursing/Adult Care Home Community Advisory Committee – 4 vac.

There were no nominations at this time so this item was rolled to the next meeting.

11. Senior Volunteer Services Advisory Council – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

12. Solid Waste Advisory Council – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

DISCUSSION ITEMS

Rules for Vested Rights Hearing

County Attorney Russell Burrell stated that included in the agenda was a draft of Procedures for Hearings on Vested Rights. These rules lie heavily on the quasi-judicial rules; however, they also take into account the General Statute that persons with a less specific interest than normally allowed to be a party in a quasi-judicial interest would have a right to speak at a vested rights hearing. The general rule would be a 3 minute limitation on witnesses speaking; however, the Board would need to recognize that certain folks with specific interest such as an adjoining property owner would probably be granted leeway by the Board to have a little more time. There would be a cross-examination which would be at the discretion of the Board. Anyone who wishes to speak would be allowed to do so in the nature of a public hearing but with rules similar to a quasi-judicial hearing. Mr. Burrell feels that this is the best compromise between the desires that the petitioners have stated for a quasi-judicial hearing while also meeting the requirements of the statutes to allow the public in general, not just those with a very specific interest, to give input on this statutory vested rights hearing.

Chairman Moyer felt that there needed to be strong public opinion but with some restrictions.

Procedure for Hearings on Vested Rights

Notwithstanding any other rule of procedure of this Board, the following rules and procedures shall apply to public hearings on applications made pursuant to Chapter 189 of the Henderson County Code (“Chapter 189”):

Rule 1: Definitions

- a) Board. Board shall mean the Henderson County Board of Commissioners.
- b) Critical Findings of Fact. Critical Findings of Fact shall mean facts determined as true by the Board, which are pertinent to the decision rendered to approve, not approve, or approve with conditions any application under Chapter 189, including the basis for any such conditions.
- c) Evidence. Evidence shall mean anything offered before the Board, which tends to prove or disprove a fact.
- d) Other Parties. Other Parties shall mean persons or entities other than the Petitioner(s) who have a substantial interest in the outcome of the Proceeding and who may be adversely affected by the decision to be rendered by the Board for a particular Proceeding. Other Parties shall include any Henderson county government staff acting as such. Persons identified by the Board as having a sufficiently substantial interest to be identified as an Other Parties shall have standing to call and cross-examine witnesses. Other Parties may, but are not required to, oppose the petition.
- e) Party. The Petitioner(s), and any Other Parties.
- f) Petitioner. Petitioner shall mean the person requesting that the Board grant it vested rights under Chapter 189.
- g) Sworn Testimony. Sworn Testimony shall mean testimony given by a witness who has sworn or affirmed that the testimony, which they are about to give, is true to the best of their knowledge.
- h) Witness. A witness shall mean any person who testifies in a proceeding under Chapter 189. A Witness need not be called to testify by the Petitioner(s) or an Other Party.

Rule 2: Duties of the Chair

- a) Conduct Proceedings. The Chairman shall conduct the Proceedings in an orderly and efficient manner under these rules.
- b) Rule of Matters of Procedure and Evidence. The Chairman shall be responsible for ruling on questions of Procedure or admissibility of evidence.
- c) Written Decision. The Chairman shall, in conjunction with the Clerk to the Board and the County Attorney, be responsible for formulating the written decision of the Board.

Rule 3: Procedure

- a) The Board shall commence the proceeding by going into public hearing after motion and majority vote.
- b) The Chairman, or such person as he shall direct, shall give a preliminary statement of the Proceeding. The preliminary statement shall contain the name of the Petitioner and the determination requested by the Petitioner. Such statement may also contain the names of any Other Parties which the Chairman believes would be appropriate to be an Other Party to the Proceeding.
- c) Any Other Parties not named by the Chairman wishing to appear before the Board and act as an Other Party with respect to the Proceeding shall then apply to the Board for the same, and may be allowed as parties in the discretion of the Board.

- d) Only the Petitioner and Other Parties, and members of the Board, may question witnesses.
- e) All witnesses appearing in a case shall be sworn in by the Clerk to the Board.
- f) A Witness, whether or not presented by a party, shall be limited to three (3) minutes direct presentation. The Board has discretion to extend the period of direct presentation for any Witness.
- g) Cross-examination shall be allowed by the Parties of any Witness who is presented by or on behalf of any other Party, and, in the discretion of the Board, of any Witness by all Parties. The time allowed for such cross-examination shall be in the discretion of the Board. Any witness may be cross-examined by any member of the Board.

Rule 4: Order of Presentation

- a) After the preliminary statement by the Chairman, Henderson County Planning Staff shall provide a summary of the pending project, without recommendation.
- b) The Petitioner shall then present evidence in favor of its position.
- c) Henderson County Planning staff shall then present any position it wishes to take regarding the Petition.
- d) Other Parties shall then present evidence in favor of their position(s).
- e) All other Witnesses may then present their evidence.
- f) At the conclusion of all evidence, the Board may, but is not required to, allow summation by the parties.
- g) The Board may, at its discretion, request additional facts and information from Parties before arriving at a determination of the case. Once all evidence is received, the Board shall close the hearing.
- h) The Board shall discuss the evidence presented in public.
- i) The Board shall determine any findings of fact and determine any conclusions of law by a majority vote. The Board may delegate to staff the drafting of proposed findings and conclusions, subject to vote by the Board.
- j) The Board's final decision shall be made in writing, and provided to all Parties who have indicated to the Clerk to the Board their desire to receive a copy of the decision.

Rule 5: Evidence

Neither the Board, nor the Petitioner, nor the Opponents, nor Other Interested Parties, shall be bound by the Rules of Evidence.

Chairman Moyer made the motion that the Board adopt the proposed rules of procedure for vested rights hearings. All voted in favor and the motion carried.

Set New Hearing Date for Continuance of Vested Rights Public Hearing "The Glen and Highlands at Flat Rock" (Application #SR-2007-01)

Commissioner McGrady made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

Chairman Moyer requested that Clerk to the Board Elizabeth Corn inform the Board of Commissioners of dates available for all interested parties.

Elizabeth Corn explained that in order to accommodate the Petitioners, Board of Commissioners, Attorneys, and Planning Staff the dates available were May 3, May 15, May 22, or May 24. Blue Ridge Community College and East Henderson High School auditoriums were available on May 22, 2007. The timeframe requirement would be approximately 3 hours.

Chairman Moyer stated that the Board had tried hard to schedule the meeting in April, but with Attorney schedules and site availability this was the only date that could be slotted.

Commissioner Williams suggested using Blue Ridge Community College primarily because of the cost savings.

Commissioner Williams made the motion to hold the public hearing at Blue Ridge Community College on May 22, 2007 at 6:00 P.M. for the continuance of the vested rights hearing (Application #VR-2007-01). All voted in favor and the motion carried.

Attorney Angela Beeker stated, for the record, she objected to the date being set so far out and that it would be likely that the Land Development Code would be passed before that date.

Commissioner McGrady made the motion to recess the public hearing on vested rights until May 22, 2007 at 6:00 P.M.

Commissioner Williams stated that in regards to Mr. Beeker's objection to the date, he understood that the hearing to be held on May 22 would be under the current rules, not the rules adopted with the new Land Development Code.

Chairman Moyer agreed with Commissioner Williams and requested a vote to the motion on the floor to recess. *All voted in favor and the motion carried.*

CAUSE Unit Upfit Approval

Assistant County Manager Selena Coffey stated this agenda item was a follow-up to a previous agenda item from January, 2007. The staff was looking at an upfit to the Human Services Building on Spartanburg Highway to house the CAUSE Unit, which is a unit that works cooperatively with DSS and the Sheriff's Department.

The Cooper Construction (construction) quote came in at \$289,982 and the quote from Ron Pressley (cabling) came in at \$8,950 with the construction total of \$298,932. Because this project falls under the \$300,000 threshold as established in G.S. 143-129, formal bidding is not required. Project expenses, such as FF&E, signage and security for this project are estimated to cost \$84,000 based on staff's preliminary estimates. These project expenses are not required to be included in the construction bid and formal bidding for these expenses is not required.

Commissioner Young made the motion for the Board of Commissioners to award the construction bid for the CAUSE Unit upfit to Cooper Construction for \$289,982, the cabling bid to Ron Pressley for \$8,950 and project expenses not to exceed \$84,000. All voted in favor and the motion carried.

STAFF REPORTS

County Attorney's Report

Russell Burrell distributed an Addendum to an Interlocal Agreement which will be an attachment to this set of minutes. The addendum to the sales tax agreement made between the County and the Municipalities whereby, in return for the County not switching from the per-capita method of the division of sales tax in Henderson County to the Ad Valorem method of division of sales tax, each of the municipalities pays to the County one half of the benefit they receive.

County Manager's Report

Steve Wyatt reminded the Board that Thursday evening at 6:00 would be the first budget work session. He also reminded everyone that the Staff were accepting proposals for the old Public Health building. There had been one informational meeting, copies of the appraisal are available, and there had been around six contacts from parties who were interested. The County had not received a written proposal at this time.

Chairman Moyer stated that a number of calls had come in from the public encouraging the Board to try to get more information out about the process in revenues and he was referring them to the meeting on Thursday, April 5. The Board would not be setting the tax rate on Thursday, April 5 under any circumstances. The Board will be discussing the revenue side and possibly looking at a revenue neutral rate.

IMPORTANT DATES

Set Public Hearing on Rezoning Application #R-2007-03

Set Public Hearing on Rezoning Application #R-2007-01

Set Public Hearing on Rezoning Application #R-2007-02

Planning Director Anthony Starr recommended scheduling the public hearings for applications #R-2007-01 and #R-2007-02 for Monday, May 7, 2007 at 7:00 P.M. Mr. Starr felt that these two rezoning applications were straight forward and should not be time consuming. He also recommended scheduling the public hearing for application #R-2007-03 for May 16, 2007 at 11:00 A.M.

Commissioner McGrady made the motion that the Board schedule public hearings for rezoning application #R-2007-01 and rezoning application #R-2007-02 for Monday, May 7, 2007 at 7:00 P.M. All voted in favor and the motion carried.

Commissioner McGrady made the motion that the Board schedule a public hearing for rezoning application #R-2007-03 for Wednesday, May 16, 2007 at 11:00 A.M. All voted in favor and the motion carried.

CONTINUANCE OF DISCUSSION ITEMS

REGIONAL AIRPORT

Bryan Freeborn, Chairman of the Asheville Regional Airport Authority and member of Asheville City Council came to the podium. Mr. Freeborn discussed the idea of an Independent Airport Authority which was originally generated by the Mayor of Asheville. The Airport Authority had been looking at the feasibility of this option. They are in the process of putting together examples of how that governing body would take place and also looking at types of consideration that might be given to the original parties, Buncombe County and the City of Asheville. Representative Goforth introduced legislation on the Airport Authorities behalf to move them in the direction of an independent airport authority if the City and the County could get together on the issue. The only logical way to expand would be in Henderson County.

Airport Director Dave Edwards gave a historical perspective stating that the Airport Authority was originally created in 1958 by the City of Asheville. It was funded and built by the City of Asheville. In late 1979 or early 1980 the Asheville Regional Airport Authority was created through a joint agency agreement between the City of Asheville and Buncombe County. This was when the Airport Authority took over the day to day operation of funding of capital projects, operation and maintenance, and development of the airport. In 1991, the County of Buncombe, having the financial responsibility under the joint agency agreement, funded a bond issue in the amount of about \$5.5 million in order to improve capital improvements at the airport in which the debt service is still being paid. It will be approximately 9-10 years until that debt service is retired.

It is important as we move forward to look at the airport as a regional asset and not as anyone's particular asset. Without a viable airport that has a good governing structure going forward and which provides a stable environment for development at the airport, the airport won't be able to grow in a way that is needed to support WNC and that includes all of the Counties in WNC. The key players are obviously Henderson County, Buncombe County, and the City of Asheville.

The deadline, indicated by Representative Goforth, in order to move this bill through committee and get something moving is May 1, 2007. The current agreement that created the airport authority and the joint agency legislation expires in 2018 and at that point in time it will be the City of Asheville's decision to decide if they want to extend that agreement for the joint agency authority or move in a different direction which could include that the City would take the airport authority back as a city department.

Commissioner McGrady made the motion that the Board authorize the Chairman to put together appropriate delegation to work with the City of Asheville and Buncombe County to work toward an independent airport authority. All voted in favor and the motion carried.

Chairman Moyer stated that he had a discussion with the Mayor regarding the water situation and they each feel that both issues could hopefully be resolved at the same time.

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION

Chairman Moyer made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reasons: All voted in favor and the motion carried. Staff was dismissed.

1. (a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

Commissioner McGrady made the motion for the Board to go out of closed session. All voted in favor and the motion carried.

PUBLIC HEARING – Etowah Library Financing

Chairman Moyer called the meeting back to order.

Commissioner Messer made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

The public hearing was opened so that anyone who wished to be heard on the proposed project and the installment financing documents to finance the construction of the new Etowah Branch Library. The Finance Director presented an affidavit of an officer of the Times-News showing publication on March 16, 2007 of a Notice of Public Hearing to be attached to this extract as Exhibit A.

The Finance Director presented drafts of an Installment Financing Agreement and Deed of Trust to finance the construction of the new Etowah Branch Library at an estimated cost of \$1,750,000. The Finance Director stated that the financing documents have been available in the County Finance Department. The Finance Director also stated that the Local Government Commission would be considering the County's application for this financing at its May 1st meeting.

The Chairman inquired whether there were any persons who wished to speak at the public hearing. No person appeared, either in person, by attorney, or by means of written statement, to give public comment.

April 2, 2007

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Thereupon, Chairman Moyer asked for a motion to go out of public hearing.

Commissioner McGrady made the motion to go out of public hearing. All voted in favor and the motion carried.

ADJOURN

Commissioner McGrady made the motion to adjourn. All voted in favor and the motion carried.

Attest:

Terry Wilson, Deputy Clerk to the Board

William L. Moyer, Chairman