

# Think Quality - Think Future

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## Blount County Planning Department

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**TO:** Blount County Planning Commission

**FROM:** John Lamb

**DATE:** March 17, 2011

**SUBJECT:** Long Range Planning agenda items for the March 24, 2011 meeting.

### **1. Noise Issue in Zoning Site Plan Process.**

The Attorney for the County Mayor has reviewed the proposed regulations presented last month. His analysis follows the proposal below.

That the last sentence in Section 9.10 reading “Where noise is determined to be a probable off-site impact of a proposed use, a noise mitigation barrier of solid structure or earth berm, in addition to vegetative buffer, shall be designed as part of the site plan and constructed” be deleted, and that the following be placed therein:

The following requirements shall be met to address noise for any use requiring a site plan where, a) the use includes design elements not fully enclosed within a principal structure and which would be expected to produce substantial noise, specifically compressor, HVAC unit, loading area for more than two axel trucks, or b) the use includes external venting of exhaust from combustion engines contained within buildings that are part of the design of the use, and c) the site abuts any parcel zoned S-Suburbanizing, R-1-Rural District 1, or R-2-Rural District 2, or where the site abuts property containing any sensitive use listed in subsection 3 table below:

1. The purpose of noise standards, noise study and mitigation requirements is to ensure that future development minimizes the impact of noise on adjacent properties, by establishing maximum noise levels and standards for evaluating noise impacts.

2. Definitions.

- a. dBA – the A-weighted scale for measuring sound level in decibels (dB) as a unit used to express the relative intensity of a sound as it is heard by the human ear.
  - b. Leq – the energy equivalent level, defined as the average sound level on the basis of sound energy (or sound pressure squared). It is the level of constant sound which, in a given situation and time period, has the same sound energy as does a time varying sound.
  - c. Lmax – the maximum sound pressure level for a given period of time.
3. Noise standards. The site plan shall be designed to meet the following exterior noise limit standards at site property line in relation to abutting land zoned S, R-1, and R-2 and specific sensitive uses .

**Exterior Noise Limits at property line of site**

For Abutting Zone or Use	Time Period		Noise Level, dBA	
	Begin	End	L eq	L max
S-Suburbanizing District	7:00 AM	7:00 PM	55	75
	7:00 PM	7:00 AM	45	60
R-1-Rural District 1	7:00 AM	7:00 PM	55	75
	7:00 PM	7:00 AM	40	55
R-2-Rural District 2	7:00 AM	7:00 PM	55	75
	7:00 PM	7:00 AM	40	55
Sensitive Uses *	7:00 AM	7:00 PM	55	75
	7:00 PM	7:00 AM	40	55

\* residences, schools, hospitals, nursing homes, churches, and libraries

If the measured ambient noise level prior to project construction and operation exceeds that indicated in the table above at the property line of the site, then the allowable noise limits shall be set at 5 dBA above the ambient level.

- 4. A noise study shall be part of the site plan and shall be prepared and certified by a qualified professional showing how the site design shall meet the requirements in subsection 3 above. A qualified professional shall be one that is experienced in the field of environmental noise assessment and architectural acoustics.
- 5. The site design shall incorporate design controls and mitigation measures necessary to meet the requirements in subsection 3 above.
- 6. Compliance with the noise study, site plan design, and requirements in subsection 3 above shall be determined by measuring the noise level based on the mean average of not less than three 20 minute measurements for any given time period. The compliance measurements shall be conducted by the same qualified professional that

produced the noise study, and shall be taken at full operation of the subject use for the site plan.

7. Compliance with the noise study, site plan design, and requirements in subsection 3 above shall be a continuing requirement after site plan approval, construction of project and operation of project, and shall be subject to continued enforcement through compliance inspections and/or response to complaints.

8. The above standards shall not apply to those activities associated with actual construction of a subject site plan project or to those projects associated with provision of emergency, law enforcement or necessary governmental or utility services or functions.

9. A legal nonconforming use meeting requirements in other sections of this resolution shall not be subject to the above standards, provided that if the nonconforming use loses its nonconforming status by any means, then future operation and/or modification of the site requiring a site plan shall meet all requirements of this section.

Review by the Attorney for the County Mayor starts on following page.

M E M O

TO: JOHN LAMB

FROM: ATTORNEY CRAIG GARRETT

DATE: MARCH 16, 2011

RE: REFERRAL BY PLANNING COMMISSION FOR LEGAL REVIEW OF  
DRAFT NOISE REGULATION FOR INCLUSION IN ZONING  
REGULATION SECTION 9.10.J

From my conversations with you, as well as the Mayor, it is my understanding that there is legitimate concern regarding the regulation of noise levels attributable to commercial projects lying in the rural areas of the County.

I do agree that the current language in Section J has no objective criteria for determining when noise would be determined to have an off-site impact on surrounding property. As a result thereof, the present restriction could easily be classified as arbitrary.

Your two memos to me set forth two alternatives. The first being to do nothing except eliminate the language in the present ordinance. This can certainly be done, but would not address the noise issue.

I have evaluated your second alternative as modified in your second memo to me and I feel that this second alternative applies with the applicable law.

The zoning regulations or amendments thereto are subject to challenge in court when they violate certain provisions of U.S. or Tennessee Constitutions. Causes of action are generally classified as follows:

1. A procedural due process claim challenging the procedures by which the regulation was adopted;
2. A substantive due process claim based on the arbitrary and capricious action of the government in adopting the regulation;
3. A Takings Cause claim which may seek not only compensation, if the regulation amounts to a taking, but may seek invalidation and injunctive relief if the regulation exceeds what the government body may do under the Takings Clause of the Constitution;
4. Claims under some other constitutional provision that give a landowner a protectable right, not specifically involved with the real property itself, [e.g.] a claim alleging a violation of the Equal Protection Clause of the Constitution.

The suggested amendment to the regulation would only involve an evaluation of Items 2 and 4 listed above.

There will be no procedural due process claim provided the regulation is properly adopted. The regulation as worded would not amount to a taking of the property and analysis under that body of law is not required.

In essence, the regulation must be evaluated under the substantive due process and equal protection clause in the Constitution.

A substantive due process claim is based on the exercise of government power without a reasonable justification. The Courts have determined that citizens have a substantive due process right not to be subjected to arbitrary or irrational zoning decisions. A local zoning regulation will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate government purpose. The Courts in reviewing a substantive due process claim, apply what is known as a rational basis test. This test is whether the ordinance or regulation bears a reasonable relationship to the public health, safety or welfare. If it does, it is a valid exercise of the government's powers.

In essence, the Courts have held that a legislative body through zoning legislation may impose a limitation on the use of property which it may deem necessary or expedient to promote and protect the safety, health, morals, comfort and welfare of the people, provided that this power is not exercised arbitrarily which means that there must be a reasonable connection or relation between the limitation imposed and the public safety, health or welfare.

The equal protection clause of the Constitution guarantees that all persons who are similarly situated will be treated alike by the government and the law. Equal protection challenges are based upon governmental classifications. In matters of zoning, the Courts have applied the reduced scrutiny standard. This standard states that there must exist a rational basis for the classification placed by the government or that the classification must have a reasonable relationship to a legitimate state interest. Thus, as in the substantive due process challenge, the zoning regulation must be reviewed under the rational basis test.

The Courts have determined that the rational basis analysis used in an equal protection challenge does not differ in substantial regard from the rational basis test used when considering a substantive due process claim. Equal protection requires only that the legislative classification be rationally related to the objective it seeks to achieve. If a reasonable basis can be found for the classification, the zoning regulation will not be subject to challenge.

Based upon my understanding of the objective of the regulation to be amended, the County seeks to control noise associated with commercial development in rural areas that may impact adjoining property owners. This seems to me to be a legitimate government interest. The wording of the amended regulation is not arbitrary and gives objective standards and specific noise levels for specific times.

The same noise concerns are not applicable in areas that are designated as commercial or industrial zones. It appears the concern is this noise as it relates to commercial endeavors in a rural area.

Based on all of the above, it is my opinion that the proposed amendment under “Alternative 2” would be a legally valid amendment to our zoning regulation and would pass legal scrutiny.

cc: Mayor Ed Mitchell

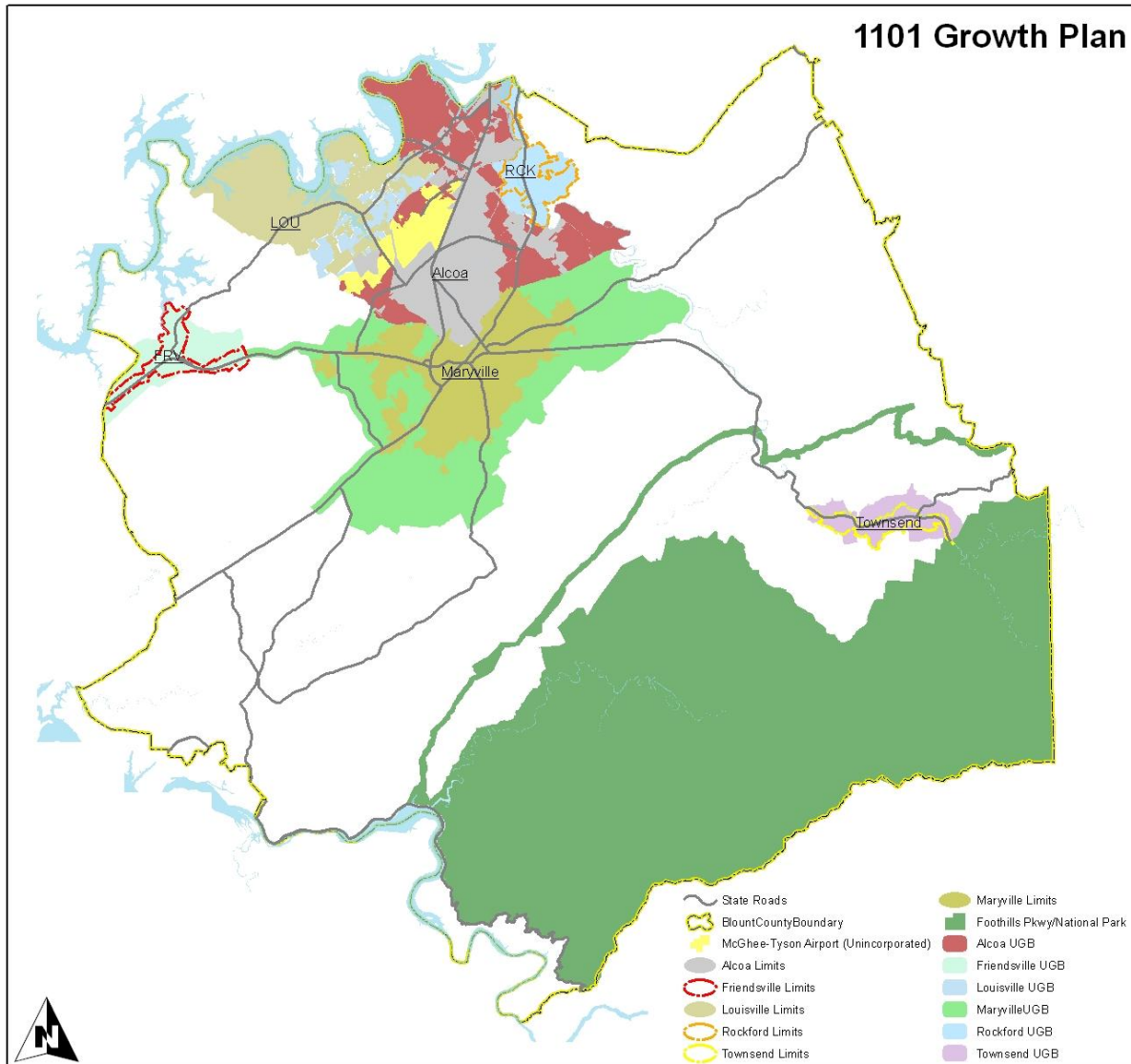
## **2. Plans and zoning in relation to sewer at the urban fringe.**

Background. It has been about ten years since the County fully evaluated two basic plans – the 1101 Growth Plan (final adoption 2001) and the Conceptual Land Use Plan (adopted 2000). Both of these plans provide a foundation for land use decisions, including zoning decisions. State statutes require that our Land Use Plan and all County Commission and Planning Commission land use decisions be in conformity with the 1101 Growth Plan. Good planning also demands that decisions be consistent with the Land Use Plan.

Over time, the situation of development may change, and our plans should reflect those changes. One change of importance to accommodating urban density development is the extension, or potential extension, of sewer at the urban fringe. In addition, our Polices Plan recognizes that there are some residual discrepancies between the approved 1101 Growth Plan, the Conceptual Land Use Plan, and the Zoning Map that need to be addressed. The following presents a call for review of our 1101 Growth Plan, our Conceptual Land Use Plan, our Zoning Map, and possibly our Zoning Regulations, in order to consider amendments to account for changes at the urban fringe.

1101 Growth Plan. Since state statutes require conformity of land use decisions to the 1101 Growth Plan, that plan would be a good starting point for discussion. See at [www.blounttn.org/planning](http://www.blounttn.org/planning) Planning Commission meeting March 2011 for a reference copy of state statutes on the 1101 Growth Plan. The map on the following page is a representation of the 1101 Growth Plan for Blount County.

The cities of Alcoa, Friendsville, Louisville, Maryville, Rockford and Townsend were considered as urban centers for purposes of growth planning under state statutes. Each of the cities identified an Urban Growth Boundary (UGB) area that, according to state statutes, "... a reasonable and prudent person would project as the likely site of high density commercial, industrial and/or residential growth over the next twenty (20) years based on historical experience, economic trends, population growth patterns and topographical characteristics" (TCA 6-58-106(a)(1)(C)). Such area for high density urban growth would be dependent on provision of urban services, particularly sewer, and should also consider projection of population and potential to accommodate such projected population within existing city boundaries. For Alcoa and Maryville, the Urban Growth Boundary also defined their extraterritorial Planning Region.



The County was tasked with identifying Planned Growth Area (PGA). The Planned Growth Area was to be the area that "... a reasonable and prudent person would project as the likely site of high or moderate density commercial, industrial and/or residential growth over the next twenty (20) years based on historical experience, economic trends, population growth patterns and topographical characteristics" (TCA 6-58-106(b)(1)(C)). Ultimately, only the McGhee-Tyson Airport was confirmed as a Planned Growth Area, with the final not containing other areas so designated by the County.

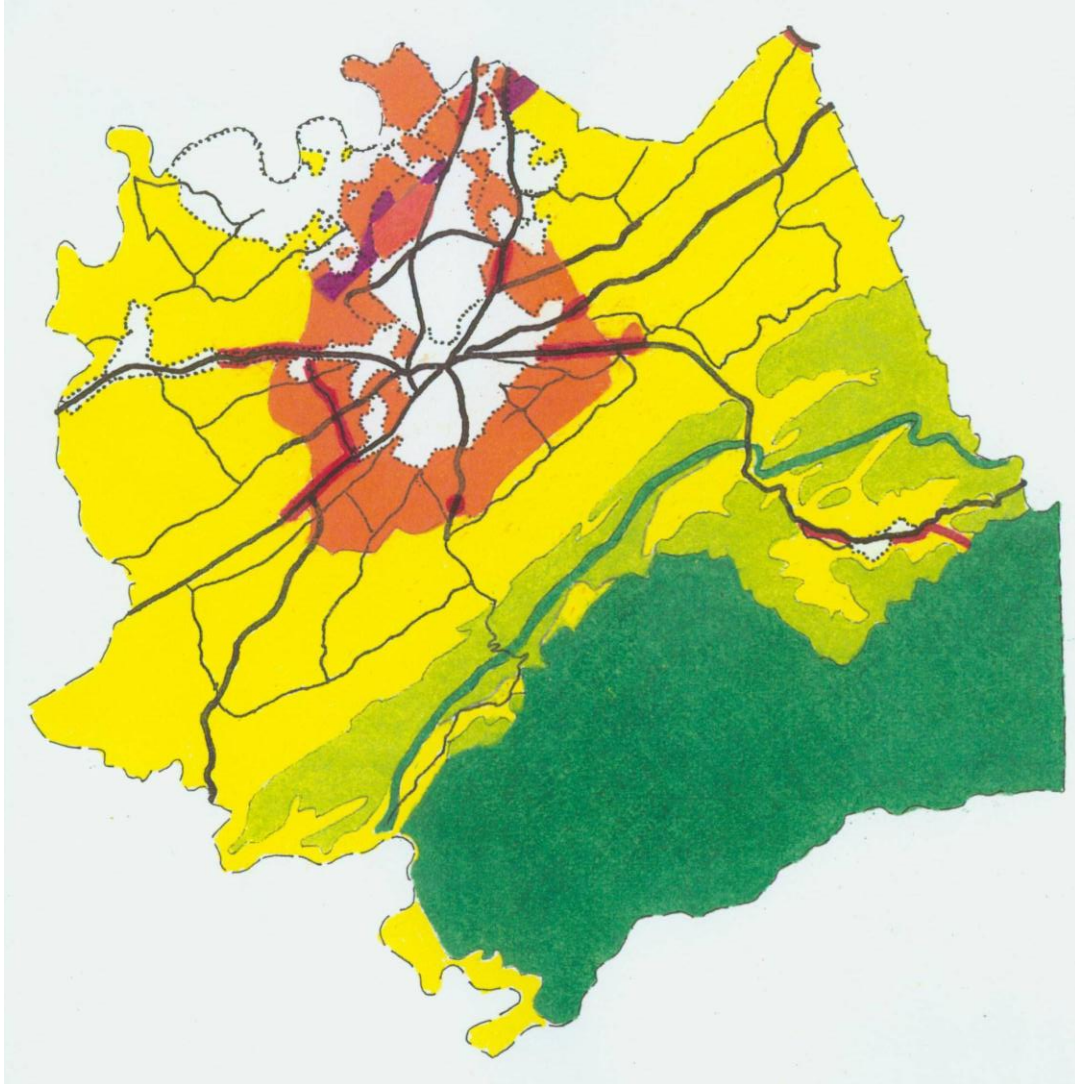
The County was tasked with identifying Rural Area, being that area outside cities and their Urban Growth Boundaries and also outside any designated Planned Growth Area. The Rural Area was to be the area which "... over the next twenty (20) years, is to be preserved as agricultural lands, forests, recreational areas,

wildlife management areas or for uses other than high density commercial, industrial or residential development” (TCA 6-58-106(c)(1)(C)). The Rural Area may accommodate low to moderate density commercial, industrial and residential development “... in a manner that reasonably minimizes detrimental impact to agricultural lands, forests, recreational areas and wildlife management areas” (TCA 6-58-106(c)(1)(D)).

The 1101 Growth Plan process was contentious. The County ultimately rejected the proposal of the 1101 Plan Coordinating Committee and declared an impasse in June 2000. With this declaration, the process went to arbitration at the State level. Arbitration and final approval by the Local Government Planning Advisory Committee (LGPAC) of the State resulted in most of the plans proposed by the Cities being confirmed, with exclusion from the Alcoa UGB of the McGhee-Tyson Airport Authority property which was designated Planned Growth Area. All other Planned Growth Area identified by the County was dropped from the final approved plan. See a critique of the 1101 planning process in Blount County at <http://www.blounttn.org/planning/Reflections%20on%20the%201101%20Process%20in%20Blount%20County.pdf>.

Land Use Plan. At about the same time that the initial 1101 Growth Plan was being developed by the 1101 Coordinating Committee, the County was developing a Conceptual Land Use Plan in conjunction with a zoning plan. See the Conceptual Land Use Plan map on the following page, and reference the full plan approved in 2000 at <http://www.blounttn.org/planning/f%20-%20Land%20Use%20Plan.pdf>. Taking cue from state statutes, the Conceptual Land Use Plan map was consistent with the County proposal for the 1101 Growth Plan, including Planned Growth Area that was eventually dropped from the final 1101 Growth Plan. This left the Conceptual Land Use Plan with some areas of conflict with the final 1101 Growth Plan.

Some areas were outside 1101 Urban Growth Boundaries, and in 1101 Rural Areas, but with designation of Suburbanizing on the Land Use Map, thus designating high to moderate density development into rural areas. Conversely, some land inside 1101 Urban Growth Boundaries were left with Rural 1 land use designation at lower densities than envisioned for urban development. These discrepancies were also reflected in the Zoning Map approved in 2000 for the Suburbanizing zone and the R-1-Rural District 1 zone at the urban fringe.



**Conceptual Land Use Map – Blount County**

- Commercial – High Density Development
- Industrial – High Density Development
- Airport – Semi-Autonomous Planned Area
- Suburbanizing – High to Medium Density Development
- Rural 1 – Medium to Low Density Development
- Rural 2 – Low Density Development
- National Park – Autonomous Planned Area

The discrepancies between the 1101 Growth Plan and the Conceptual Land Use Plan were recognized in the revision of the Policies Plan as follows:

2A Implementation Strategy (1). Update and expand the Conceptual Land Use Plan and incorporate it into a Comprehensive Plan.

- Integrate and possibly expand the following land use concepts in any land use plan update:
  - Suburbanizing Land Use – high to medium density development – mainly residential – commercial by special exception along major roads, allowing also home and family occupations – part of area expected to be annexed by cities as high density growth occurs – needs amendment of map to be consistent with 1101 Growth Plan.
  - Rural 1 Land Use – medium to low density development (1.5 units per acre or less) – mainly residential – limited commercial by special exception along major roads, allowing also home and family occupations – not expected to be subject to annexation by cities – needs amendment of map to be consistent with 1101 Growth Plan.

5A Implementation Strategy (2): The County should maintain a growth plan under Public Chapter 1101 that is consistent with the general county policy plan and other plans of the County, all plans to be used as guides for decision making on land use and development matters.

- Review the 1101 Growth Plan for consistency with County plans, and for appropriateness in addressing issues of growth and its impacts.
- The Cities and County should work together to address issues of growth and its impact.

Sewer at the Urban Fringe. Public sewer is the most important factor in defining land that can be developed at urban density. The Rural Area of the 1101 Growth Plan contains at least two areas that have extension of sewer from Maryville, and which have been allowed to develop at relatively high density in the Suburbanizing zone. One area is south of Ridge Road off of Sam James Road, particularly extension of the Country Meadows subdivision. The second is off of William Blount Drive across from the High School, particularly Brittingham subdivision split by the Maryville planning region.

In addition, sewer is being extended from Knox County into Blount County along Roddy Branch Road into Rockford (south of the Stock Creek Industrial Park which is already served by sewer). The area that could be served by sewer contains a substantial amount of land presently zoned R-1-Rural District 1 within the 1101 Rural Area designation.

Proposal to Update Plans and Zoning at the Urban Fringe. The following is a proposal to update the 1101 Growth Plan, the Conceptual Land Use Plan, and the

Zoning Map to make all documents consistent at the urban fringe where sewer is present, being extended, or potentially would be extended within a 20 year time horizon.

The first document that will need review and possible amendment is the 1101 Growth Plan since it is the only plan that requires that other plans and actions conform under state statutes. To amend the 1101 Growth Plan, the Coordinating Committee for the plan would need to be reconstituted by the County Mayor, including membership from all cities and the county. The process of amendment would give opportunity for the cities to identify areas already covered by public sewer, and long range plans for sewer coverage that could accommodate urban density development.

The amendment of the 1101 Growth Plan would need consensus and agreement between all political jurisdictions for timely processing. After agreement on an amended plan by the Coordinating Committee, each county and city legislative body would need to approve the plan separately. The plan would then go to the Local Government Planning Advisory Committee of the state for final approval, and then would need to be registered with the Register of Deeds Office to become final and official.

Staff suggests that the Planning Commission make recommendation to the Mayor and the County Commission to start the 1101 Growth Plan amendment process. The process could take six months or more to complete with all required public notices and hearings.

Concurrent with the 1101 Plan amendment process, the Planning Commission could undertake review of the Conceptual Land Use Plan consistent with any amendments to the 1101 Growth Plan, and from that base could begin to identify needed amendments to the Zoning Map for plan consistency. The final approval of any Land Use Plan and Zoning Map amendments would need to await approval of 1101 Growth Plan amendments.

### **3. Possible Trainings in April and May.**

If enough Commissioners are interested, I will schedule sometime in April a two hour training session on “Meeting Management: A Mock Planning Commission Hearing” produced by the American Planning Association, consisting of video and

facilitated discussion. Commissioners McClellan and Roddy have already attended a session on this for 2010 training certification.

If enough commissioners are interested, I will schedule sometime in May a four hour training session on the roles and responsibilities of Planning Commissioners and the Planning Commission. This is an adaptation of a training provided by the State of Tennessee Local Planning Assistance Office. Some on the present Commission may remember this from several years back.

Please determine your interest, check your calendars and come with dates that you could attend trainings in April and May.

#### **4. Maps of Blount County in regional context.**

In preparation for active participation in the three year regional planning process covering Anderson, Blount, Loudon, Knox and Union counties, and in consideration of other regional configurations, staff will make short presentation of a series of maps illustrating regions to which Blount County belongs

#### **5. New Census 2010 data.**

The Census 2010 counts will be available within a day or two of this memo, and staff will prepare a short presentation of updated population growth trends for the County.

#### **6. Staff reports.**

Reminder concerning the Plain Talk on Quality Growth Conference March 30 and 31 in Knoxville. See information on the East Tennessee Quality Growth organization (planning sponsor of the conference), conference information and registration information at <http://www.etqualitygrowth.org/index.html> . If Planning Commissioners wish assistance in registration, please contact Marlene Hodge in the Planning Department. Planning Commissioners can fulfill their training requirements for the year by participating in the conference.

Staff may have other reports at the meeting.