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HOW UNCERTAINTY IN THE REDRAWING OF SCHOOL DISTRICTS AFFECTS HOUSING PRICES, A CASE STUDY: COMPARING NEIGHBORHOODS IN CHARLOTTE, NORTH CAROLINA AND COLUMBIA, MARYLAND

Kristen Ulan

I. Introduction

While price is a significant factor in purchasing real estate, more important is location. Different individuals have varied location requirements for their desired property.¹ Younger individuals and couples without immediate family plans typically do not consider the assigned schools as much as a family with young children.² Likewise, for those with young children, proximity to bars and nightlife is not as imperative as the local school district, neighborhood safety, and nearby children.³ The neighborhoods involved in this case note tend to attract families that care most about the school district and boundary lines.⁴ In Charlotte, North Carolina, there is a significant association between real estate prices and high school districting, whereas in Columbia, Maryland there is not the same association. Due to this, real estate prices for houses located in areas of proposed redistricting and border areas⁵ in Charlotte fluctuate and real estate in these areas tends to be underutilized. Because Columbia residents do not face the same fluctuation and uncertainty, there is greater incentive to

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1. Dini Harris, *Price Isn't the Only Factor when House Hunting*, REALTOR.COM, <http://www.realtor.com/home-finance/homebuyer-information/price-isnt-the-only-factor-when-house-hunting.aspx?source=web> (last visited Apr. 26, 2013).
 2. It is possible that some younger individuals do value assigned schools or will keep that in mind. *Id.*
 3. *Id.*
 4. See, e.g., *Cotswold/East Meck/Myers Park School Issue*, CITYDATA.COM (Sept. 22, 2009, 7:14 PM), <http://www.city-data.com/forum/charlotte/770080-cotswold-east-meck-myers-park-school.html> (anonymous forum post concerning the issue of sending kids to overcrowded schools); *Pros/Cons to Live in Howard County, Md. or Fairfax, Va.*, CITYDATA.COM (Jan. 16, 2008, 7:44 AM), <http://www.city-data.com/forum/maryland/234526-pros-cons-live-howard-county-md.html> (anonymous forum post seeking to move to a place that is a "family friendly affordable neighborhood with excellent schools").
 5. Border areas are the areas located closest to the school district boundaries. See Thomas J. Kane et al., *School Quality, Neighborhoods, and Housing Prices: The Impacts of School Desegregation* (Nat'l Bureau of Econ. Research, Working Paper No. 11347, 2005), <http://www.nber.org/papers/w11347.pdf>.

fully utilize real estate by owners. The history of the areas suggests that this difference may lie in the different societal choices made forty years ago between integration or fighting integration in schools. Both counties' school board societal choice is still unfolding and the effects are much different in Howard County, which implemented voluntary integration, compared to Mecklenburg County, which fought to keep segregation all the way to the Supreme Court.

Part II discusses the history of the educational system, historic residential housing patterns, and school redistricting in the United States. Part III reviews the issue at hand in this case study, including a brief background of the school redistricting issues in Charlotte-Mecklenburg and Howard County Public school systems, followed by an introduction to both areas on which this case study focuses—the Cotswold neighborhood in Charlotte and the Pointer's Run neighborhood in Columbia. Part IV analyzes housing differences within these areas as well as in comparison to neighboring areas in which the school districting is certain and compares these two areas—how the uncertainty in school assignments affects Charlotte much more than Columbia and the effects of this uncertainty on the utilization of land—concluding that the uncertainty created post-*Brown v. Board of Education* still affects both areas today, and that further research is required to determine how to address the resulting issues.

II. Background

A. *Education and Race in America*

The current educational system is a relatively new establishment. Indeed, for the majority of early United States history until the late 1800s, education was segregated or only available based on race.⁶ In southern states,⁷ the majority of children did not attend a formal school.⁸ Slaves were legally prohibited to receive formal education, poor free children did not typically attend school, and “[t]he wealthier planters hired tutors for their children.”⁹ However, there were pri-

6. *Segregation and Integration*, K12ACADEMICS.COM, <http://www.k12academics.com/history-education-united-states/segregation-integration> (last visited Apr. 26, 2013) (“For much of its history, education in the United States was segregated (or even only available) based upon race. . . . For the most part, African Americans received very little to no formal education before the Civil War.”). Even in the North, integrated schools were met with opposition. *E.g., id.* (“Early integrated schools such as the Noyes Academy, founded in 1835, in Canaan, New Hampshire, were generally met with fierce local opposition.”).

7. Meaning those states south of the Mason-Dixon Line.

8. *Segregation and Integration*, *supra* note 6 (“In the South where slavery was legal, many states had laws prohibiting teaching enslaved African Americans to read or write. A few taught themselves, others learned from white playmates or more generous masters, but most were not able to learn to read and write.”)

9. Poor free children included poor white children as well. *Id.*

vately run and supported schools for freed men and white children. It was only during the Reconstruction period that public education laws establishing public education for all were passed in the South; nonetheless, the schools remained segregated.¹⁰ The Supreme Court attempted to change this in 1954 when it ruled that “separate but equal” was not equal and was, in fact, unconstitutional.¹¹ Nevertheless de jure segregation continued in much of the South, especially within education.¹²

The federal government attempted to dismantle de jure segregation in education following the *Brown* decision through a policy of intervention.¹³ The first intervention occurred when President Dwight D. Eisenhower ordered federal guards to Little Rock, Arkansas to accompany a group of African-American students into Central High School after Governor Orval Faubus sent National Guard troops to prevent their attendance.¹⁴ Following the incident in Little Rock, Governor Ross Barnett of Mississippi attempted to uphold the denial of admittance of James Meredith to the University of Mississippi, after the Fifth Circuit ordered subsequent federal intervention.¹⁵ The Court, throughout the 1960s and 1970s, dealt with multiple cases in

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10. *Id.* *Plessy v. Ferguson*, 163 U.S. 537 (1896), propagated segregation via its “separate but equal” doctrine. The doctrine stated that providing separate services and facilities for minorities was permissible so long as they were “equal” to those afforded to whites. Kevin F. Ryan, *Remembering and Forgetting Brown*, VT. B.J., Spring 2004, at 5. However, the facilities were not equal; and frequently suffered “from inadequate funding, outmoded or dilapidated facilities, and deficient textbooks.” *Segregation and Integration*, *supra* note 6.
 11. *Brown v. Board of Education*, 347 U.S. 483 (1954) (making *de jure* racial segregation illegal).
 12. See GARY ORFIELD & CHUNGMEI LEE, CIVIL RIGHTS PROJECT AT HARVARD UNIV., *RACIAL TRANSFORMATION AND THE CHANGING NATURE OF SEGREGATION* 8 tbl.1, 13 fig.1 (2006). The *Brown* decision was met with extreme hostility in the South. Leland Ware, “*Deliberate Speed*”: Implementing *Brown*’s Ambiguous Mandate, DEL. LAW, Spring 2004, at 26. Southern states either continued de jure segregation or used tactics that significantly delayed in the segregation process. *Id.* This was after the court explicitly directed the school districts to dismantle the segregated institutions, especially in the educational setting, and effect nondiscriminatory educational processes with deliberate haste. Joseph Henry Bates, *Out of Focus: The Misapplication of Traditional Equitable Principles in the Nontraditional Arena of School Desegregation (A Case Study of Desegregation in Little Rock, Arkansas)*, 44 VAND. L. REV. 1315, 1319-20 (1991).
 13. See Bates, *supra* note 12, at 1319-20; Ware, *supra* note 12, at 28.
 14. Ware, *supra* note 12, at 27.
 15. Even with federal intervention, Governor Bartlett continued to refuse Meredith to register for classes. It was only after federal troops arrived and occupied the town of Oxford that Meredith was permitted to register. While the number of troops dropped during his tenure at the school, the troop occupation only ended upon Meredith’s graduation in 1963. *Id.* at 27-28.

which there was too much deliberation and not enough action.¹⁶ In each case, the Court put an end to the South's resistance.¹⁷

In recent years, Supreme Court jurisprudence has taken a dramatic shift in school jurisprudence. The Court has held that as long as school districts complied in good faith with the original desegregation decree, they cannot be held responsible for external forces creating single-race schools.¹⁸ This new standard for compliance with the *Brown* mandate means that many public schools are highly segregated by race.¹⁹ The average white student in America now attends a school that is approximately eighty percent white, whereas the average black student in America attends a school that is half black and the majority of Latinos students attend a majority Latino school.²⁰ Although there is segregation among minority groups, the majority of the segregation that occurs in public schools is between whites and nonwhite minority groups.²¹

B. Residential Housing Patterns in the United States

Residential segregation by race is not as pervasive as it once was.²² However, residential segregation by income is on the rise, and with

16. *Id.* at 28.

17. In the first case, *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 229 (1964), the Court ordered the reopening of all of the schools closed in order to avoid desegregation. In *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20 (1969), the Court held that a segregated school system with intent to integrate with "all deliberate speed" was unconstitutional, that segregated, dual school systems must terminate immediately, and operate under as unitary schools. In *Green v. County School Board of New Kent County*, 391 U.S. 430, 438 (1968), the Court held that those states which still had segregated school systems had the burden of eradicating the old system "root and branch" and that school systems must bear the burden of proving compliance with the new standard. In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Court held it permissible for schools to pair noncontiguous school zones such that students could be bused to integrate. Finally, in *Milliken v. Bradley*, 418 U.S. 717 (1974), the Court held that, unless their actions contributed to the segregation in question, suburban school districts could not be required to participate in court-ordered desegregation plans.

18. See, e.g., *Bd. of Ed. v. Dowell*, 498 U.S. 237 (1991) (if a school system "had complied in good faith with the [original] desegregation decree," and whether all "vestiges of past discrimination had been eliminated to the extent practicable."); *Freeman v. Pitts*, 503 U.S. 467 (1992) (when single-race schools continue because of racial composition changes of neighborhoods or other external factors, school districts will not be held responsible unless those factors were specifically caused by actions taken by school officials.); *Missouri v. Jenkins*, 515 U.S. 70 (1995).

19. See ORFIELD & LEE, *supra* note 12, at 8 tbl.1, 13 fig.1.

20. Goodwin Liu, *Seattle and Louisville*, 95 Cal. L. Rev. 277, 278 (2007).

21. *Id.*

22. Edward Glaeser & Jacob Vigdor, *The End of the Segregated Century: Racial Segregation in America's Neighborhoods, 1890-2010*, at 66 (Manhattan Inst., Civic Report No. 66, 2012), http://www.manhattan-institute.org/pdf/cr_66.pdf. The dissimilarity index, which measures residential segregation through

racial minorities accounting for more than half of those in the low-income bracket, it appears that residential segregation by income ultimately creates predominantly white or predominantly minority neighborhoods.²³ There are a number of influences which may explain the trend, including exclusionary zoning practices, location of public housing, discriminatory homeownership practices, attitudes and preferences towards housing location, and gentrification.²⁴

i. Exclusionary Zoning Practices

Exclusionary zoning practices were first used in California municipalities to omit Chinese immigrants from certain areas. After the Supreme Court ruling in *Plessy v. Ferguson*, many Southern cities adopted racial zonings to segregate the different races.²⁵ The Supreme Court held in *Buchanan v. Warley* that racial zoning practices were illegal.²⁶

the census bureau data, has declined in the top eighty-five cities in the country and in all but one of the nation's housing markets, the separation of black residents from other races is lower than the national average in 1970.

23. Margery Austin Turner & Karina. Fortuny, *Residential Segregation and Low-Income Working Families* (Urban Inst., Low-Income Working Families Paper 10, 2009), http://www.urban.org/uploadedpdf/411845_residential_segregation_liwf.pdf.
24. See, e.g., MODIBO COULIBALY ET AL., SEGREGATION IN FEDERALLY SUBSIDIZED LOW-INCOME HOUSING IN THE UNITED STATES at 92-93, 117-19 (1998); Nancy A. Denton, *Segregation and Discrimination in Housing*, in A RIGHT TO HOUSING: FOUNDATION FOR A NEW SOCIAL AGENDA 61 (Rachel G. Bratt et al. eds., 2006); MICHAEL B. DE LEEUW ET AL., POVERTY RACE RESEARCH ACTION COUNCIL & NAT'L FAIR HOUS. ALLIANCE, RACIAL SEGREGATION AND HOUSING DISCRIMINATION IN THE UNITED STATES (2008), <http://www.pirac.org/pdf/FinalCERDHousingDiscriminationReport.pdf>; Rolf Pendall et al., *Connecting Smart growth, Housing Affordability, and Racial Equity*, in THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA 219 (Xavier De Souza Briggs ed., 2005); ALEX F. SCHWARTZ, HOUSING POLICY IN THE UNITED STATES 132 (2d ed. 2010); Camille Zubrinsky Charles, *Neighborhood Racial Composition Preferences: Evidence from a Multiethnic Metropolis*, 47 SOC. PROBS. 379 (2000); Reynolds Farley et al., *The Residential Preferences of Blacks and Whites: A Four-Metropolis Analysis*, 8 HOUSING POL'Y DEBATE 763 (1997); John Iceland & Melissa Scopilliti, *Immigrant Residential Segregation in U.S. Metropolitan Areas, 1990-2000*, 45 DEMOGRAPHY 79 (2008); Alexander von Hoffman, Eric S. Belsky & Kwan Lee, *The Impact of Housing on Community: A Review of Scholarly Theories and Empirical Research* (Joint Ct. for Hous. Studies of Harvard Univ., Working Paper W06-1, 2006), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w06-1_impact_of_housing_on_community.pdf; Maria Martinez-Cosio, *Coloring Housing Changes: Re-introducing Race into Gentrification* (unpublished manuscript) (presented at the annual meeting of the American Sociological Association, New York, New York, Aug. 11, 2000).
25. See Pendall et al., *supra* note 24, at 219-246; Christopher Silver, *The Racial Origins of Zoning in America*, in URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY: IN THE SHADOWS 23 (June Manning Thomas & Marsha Ritzdorf eds., 1997); David E. Bernstein, *Lochner, Parity, and the Chinese Laundry Cases*, 41 WM. & MARY L. REV. 211 (1999).
26. See *Buchanan v. Warley*, 245 U.S. 60 (1917).

Despite this announcement, many governments continued their zoning practices, albeit by using alternative land use designations instead.²⁷ These designations included minimum house size requirements, large-lot zoning, and bans on secondary units. Typically, designations of this sort would make housing more expensive, thereby eliminating lower income individuals from certain neighborhoods.²⁸

ii. Location of Public Housing

Historically, both local and federal policies have segregated public housing.²⁹ In terms of local policies, local governments have always held control over where and when to build public housing. As such, the white majority, which refused to have public housing in their neighborhood unless the housing was specifically reserved for the low-income white population, tended to dictate that public housing for minorities should be located together in specific areas.³⁰ As for the federal government, the vast majority of those housing projects supported by the Public Works Administration and the U.S. Housing Authority before World War II were segregated by race.³¹ After the war, anti-discrimination laws led to a reduction in the number of segregated housing projects. Nevertheless, this reduction was short-lived for two reasons. First, as some of the white tenants moved out due to increases in income, the proportion of minorities in the housing rose. Second, the remaining white tenants were typically elderly and moved to housing specifically designated for seniors. Further, housing projects were primarily located in slum areas and vacant industrial sites or in metropolitan areas considered to be low income.³²

iii. Discriminatory Homeownership Practices

There are two distinct types of discriminatory homeownership. First, as established and sanctioned by the Federal Housing Adminis-

27. Pendall et al., *supra* note 24.

28. As established prior, the majority of the lower-income class are minorities, so when the zoning regulations eliminate lower-income individuals from certain neighborhoods, they also eliminate minorities from that neighborhood. Therefore, segregation by income was a way to meet the goal of segregating by race. *Id.*

29. See SCHWARTZ, *supra* note 24, at 132; COULIBALY ET AL., *supra* note 24, at 92-93.

30. See SCHWARTZ, *supra* note 24, at 132; COULIBALY ET AL., *supra* note 24, at 117-19.

31. Of the forty-nine housing projects built by the Public Works Administration prior to World War II, forty-three were segregated by race. Of the two hundred and sixty-one built by the U.S. Housing Authority, two hundred and thirty-six were segregated by race. See COULIBALY ET AL., *supra* note 24, at 63, 70.

32. See *id.* at 93.

tration in 1944, there is the outdated practice of redlining.³³ The Federal Housing Administration used the maps created by the Home Owners' Loan Corporation which coded areas as credit-worthy based on the race of occupants and the age of the housing stock. Banks refused to approve loans for those individuals located in predominantly minority neighborhoods.³⁴ Because of this, many minorities were unable to purchase their homes and did not have the means to move to the areas where banks would approve loans. Because of this, while the majority of whites were able to move to the suburbs where loans were authorized, the majority of minorities remained in the cities.³⁵ While overt redlining was outlawed in the 1970s, the process and the effect did not diminish.³⁶ The second type of discriminatory homeownership is racial steering.³⁷ Racial steering is the practice of real estate agents and brokers steering individuals of racial and ethnic groups to areas occupied by other members of such racial and ethnic groups. This practice continually reinforces segregation, as opposed to integration. Like redlining, this practice was outlawed, but continues.³⁸

iv. Attitudes and Preferences Towards Housing Locations

As the real estate mantra goes, when choosing a house it is all about "location, location, location."³⁹ Certain theorists believed that racial concentrations in a neighborhood influence residential choice, such that should the population of minorities in a neighborhood increase to a certain concentration, the white population will leave.⁴⁰ These theorists also believe that African-Americans choose to live with others of their race because of cultural similarities, maintaining a sense of

33. Denton, *supra* note 24, at 61-81.

34. Therefore, these individuals were unable to retain long-term mortgages on their homes. *Id.*

35. *Id.*

36. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 45-46 (1996). As Mr. Williams states, "prudent lenders will exercise caution in advancing mortgages, particularly in neighborhoods marked by strong indication of owner disinvestment and owner abandonment." *Id.* at 46. Since housing prices increased prior to the outlawing of redlining, minorities faced higher market entry costs such that they typically lived in lower-income, less desirable areas in the city. See Denton, *supra* note 24, at 65-66.

37. DE LEEUW ET AL., *supra* note 24.

38. *Id.* The Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 42 U.S.C. § 3604 (2006), prohibits discrimination based on race, religion, or national origin in the sale, rental, or financing of housing. See DE LEEUW ET AL., *supra* note 24, at 13.

39. Gregory D. Squires & Charis E. Kubrin, *Privileged Places*, SHELTERFORCE ONLINE (2006), <http://www.nhi.org/online/issues/147/privilegedplaces.html>.

40. See Denton, *supra* note 24, at 65-66.

racial pride, or out of fear of racial hostility.⁴¹ Recent studies have found that perception of neighborhoods is extremely influential in the decision regarding where to purchase.⁴²

v. Gentrification

Gentrification involves lower-income residents being replaced by higher-income newcomers in rising neighborhoods.⁴³ Typically, the displaced residents are minority, while the higher-income individuals are white, such that the turnover involves turning a predominantly minority area to a predominantly white area.⁴⁴ The gentrification movement in the United States was brought about by two movements: the economic transformation from a manufacturing economy to a post-industrial service economy and the expansion of the need for centralized administrative and corporate activities.⁴⁵

C. School Redistricting

Residential segregation by income, which ultimately creates racially segregated areas within cities, has created greater issues with school districting uncertainty.⁴⁶ Much like electoral redistricting, school redistricting occurs where certain attendance areas grow disproportionately with others within a district.⁴⁷ In redistricting, some systems, such as those in Seattle and Louisville, attempt to assign students to schools in order to maintain integrated schools.⁴⁸ However, the Court has held that in order to so do, the school system must be under court-ordered desegregation, to which neither Seattle nor Louisville were subject.⁴⁹ Others use redistricting to simply alleviate overpopulation at particular schools and do so by reassigning students to the next closest school.⁵⁰ This last issue is what is at hand in these case studies.

41. See Farley et al., *supra* note 24, at 763-800.

42. See Alexander J. Laurie & Narendra K. Jaggi, *Role of 'Vision' in Neighborhood Racial Segregation: A Vaariant of the Schelling Segregation Model*, 40 Urb. Studies 2687 (2003). However, their research suggests public policies aimed at changing perceptions that fuel segregation may ultimately reduce or eliminate the need for segregation. See *id.* at 2699-2700.

43. Martinez-Cosio, *supra* note 24.

44. See *id.*

45. Many of the major cities in the United States have become gentrified. Lees, Loretta, Tom Slater, and Elvin K. Wylly. *The Gentrification Reader*. London: Routledge, 2010.

46. Marc Seitles, *The Perpetuation Of Residential Racial Segregation In America: Historical Discrimination, Modern Forms Of Exclusion, And Inclusionary Remedies*, 14 J. LAND USE & ENVTL. LAW 89 (1998).

47. See Liu, *supra* note 20.

48. *Id.* at 278-79.

49. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 703 (2007).

50. See Sara Toth, *County Prepares for School Redistricting*, BALT. SUN (Sept. 13, 2012), <http://www.baltimoresun.com/news/maryland/howard/columbia/ph-ho-cf-redistricting-0913-20120913,0,7439703.story>; *Debate Heats up over*

D. Highest and Best Use Concept in Use of Land

Uncertainty in school redistricting in Charlotte leads to the underutilization of land, whereas the same is not true in Columbia where there are incentives to fully utilize properties.

The phrases “fully utilize,” “underutilize,” and many variations are used throughout; they are meant to encompass the concept of highest and best use (HBU), a concept popularly used in real estate appraisal.⁵¹ HBU has been defined as the reasonable and probable use of real estate which supports the highest value of that use, as compared to reasonably probable and legal alternative uses, found to be “physically possible, appropriately supported, financially feasible and that results in the highest value.”⁵² The legal foundation for this doctrine is found in early pronouncements of the rule by the Supreme Court which held more than 150 years ago that Fifth Amendment just compensation—in terms of eminent domain—is to be determined “by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future,” as opposed to in terms of existing use of the property.⁵³ HBU, in practical terms, is the most profitable use of the property in light of its zoning, economic, environmental, legal, practical, social and physical characteristics unique to the property.⁵⁴

There are four criteria to HBU that must be met: (1) legal permissibility, (2) physical possibility, (3) financial feasibility, and (4) maximum profitability, sometimes phrased as maximum productivity.⁵⁵ These criteria pose four distinct questions which provide the framework for an analysis as to whether a proposed use may be the highest and best.⁵⁶ The first, for legal permissibility, is the following: “Is the proposed use *legal* under existing zoning and/or other applicable rules, regulations and bylaws as of the date of value?” The second, for physical possibility is the following: “Can the land *physically* (e.g., size, shape, frontage, access, wetlands, subsurface conditions, etc.) support, sustain, promote and/or accommodate the proposed use?” The

Charlotte School Zone Redistricting, CAROLINA NEWS 14 (Nov. 19, 2012, 8:48 PM) <http://triangle.news14.com/content/headlines/616071/debate-heats-up-over-charlotte-school-zone-redistricting>.

51. See James D. Masterman, *Proving Highest And Best Use*, in EMINENT DOMAIN AND LAND VALUATION LITIGATION 313, 316 (ALI-ABA Course of Study, Course Handbook SK045, 2005).

52. *Id.* (citing J.D. EATON, REAL ESTATE VALUATION IN LITIGATION 105 (2d ed., 1995)).

53. *Id.* (citing *Mississippi & Rum River Boom Co. v. Patterson*, 98 U.S. 403, 407 (1879)).

54. *Id.*

55. *Id.* (citing DICTIONARY OF REAL ESTATE APPRAISAL 171 (Appraisal Institute, 3d ed., 1993)).

56. *Id.* at 317 (citing AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, THE APPRAISAL OF REAL ESTATE 276 n.1 (10th ed., 1992)).

third, for financial feasibility, are the following two questions: "Can a prospective developer put the land to the use proposed in a *financially sound* manner? Is the cost associated with achieving the proposed future use (e.g., site preparation, rehabilitation,) reasonably related to the return generated in terms of value (and profit) by the future use such that the project will be undertaken by a reasonably prudent developer?" And finally, the fourth, for maximum profitability, is the following: "Will the proposed use produce the highest economic land value and generate both a *return of* and a *return on* the capital invested by the landowner/developer?"⁵⁷

"While the above-referenced criteria are interrelated, proof of [HBU] should undertake an analysis of the four prongs sequentially[,] such that "[t]he tests of physical possibility and legal permissibility must be applied before [those] of financial feasibility and maximum profitability" ⁵⁸ In a recent article, the authors offered a "new definition" to clarify a "redundancy and ambiguity in several aspects of the traditional definition."⁵⁹ Their new definition is as follows: "[t]he probable use of land or improved property—specific with respect to user and timing of the use—that is adequately supported and results in the highest present value."⁶⁰

Keeping this information in mind, for this note, a house is fully utilized when it is the highest and best use of the property in question and, specifically, is at maximum profitability.⁶¹ In contrast, a property is underutilized if the property is not the highest and best use and, specifically, is not at maximum profitability.

III. Issue

The issue this case note attempts to answer is why there is such a difference between the actions of the parents in Howard County and those in Mecklenburg County. One of the biggest reasons for this difference may be that property values in Mecklenburg County are more closely tied to the high school to which the property is districted than in Howard County. This is likely because there is a greater difference between the educational performance of the school which the student is currently districted in and that of the school that the district

57. *Id.* at 316-17.

58. This is because "[t]here is little to be learned from analyzing the financial feasibility of an illegal, or physically impossible, use." *Id.* (citing J.D. EATON, REAL ESTATE VALUATION IN LITIGATION 105 (2d ed., 1995)).

59. *Id.* (citing David C. Lenhoff & Richard L. Parli, *A Higher and Better Definition*, APPRAISAL JOURNAL, Winter 2004, at 48).

60. *Id.*

61. There are many aspects of the definition of maximum profitability. For the purposes of this note, the only contested issue of HBU is maximum profitability. In terms of maximum profitability, I mean that the house is updated, as opposed to reminiscent of the time past. An example of an updated home would be granite countertops in the kitchen.

wishes to assign the student. The background of the areas, mainly the choice made forty years ago whether to integrate or fight to continue to segregate, is a major explanation as to the difference in the response of parents. These areas continue to feel the effects of this choice. In Howard County, where they implemented voluntary integration of the school systems, the effect of school districting is minimal on the prices of land and real estate. Conversely, in Mecklenburg County, where they fought hard to keep segregation and fought all the way to the Supreme Court, there is a direct association between the prices of land and the school district. The different decisions explain the divergent effects felt.

A. *Overview of Charlotte-Mecklenburg and Howard County Redistricting*

Charlotte-Mecklenburg School District (hereafter, "CMS"), in North Carolina, was once a dual school system.⁶² Per district court order, which was affirmed by the Supreme Court in 1971, the school underwent a massive restructuring, including noncontiguous attendance zones and using bus transportation "as a tool of school desegregation."⁶³ Likewise, Howard County Public School System (hereafter, "HCPSS"), in Maryland, was once a dual school system.⁶⁴ In 1964, they voluntarily integrated the students in each of the systems.⁶⁵ In recent years, both systems have undergone massive growth in particular attendance areas.⁶⁶ As such, both systems have announced redistricting plans; however, the response from parents in each of the areas was much different. While parents of students in Howard County showed clear support for either redistricting or not redistricting at a community meeting, there was not the level of hostility or anger as seen in the Mecklenburg County redistricting meeting.⁶⁷

62. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

63. *Id.* at 5.

64. Joe Burris, *Howard School Board Apologizes for Earlier Segregation*, BALT. SUN (Nov. 15, 2012), http://articles.baltimoresun.com/2012-11-15/news/bs-md-ho-school-board-apology-20121115_1_school-board-education-national-historic-site-segregation.

65. There seems to be uncertainty as to what year the system was integrated. In Mr. Burris' article, the year is 1964, but eleven years after the 1954 landmark decision. *Id.* According to Mr. Ivan Penn, the system integrated in 1965, ten years after the Supreme Court mandate that public school systems integrate with "all deliberate speed." Ivan Penn, *Desegregation Recalled in School's Celebration*, BALT. SUN (Nov. 18, 1994), http://articles.baltimoresun.com/1994-11-18/news/1994322047_1_guilford-woodson-elementary-school.

66. See sources cited *supra* note 50.

67. See sources cited *supra* note 50.

B. Introduction of the Areas and Studies

The Cotswold area,⁶⁸ within Charlotte, as seen in the Appendix,⁶⁹ was considered the up-and-coming area approximately five years ago.⁷⁰ The desirability of this area was that the area is located just outside the uptown⁷¹ area.⁷² Meanwhile, the Pointers Run neighborhood within Columbia, seen in the Appendix,⁷³ is considered one of two neighborhoods within the River Hill Village, the last completed village in Columbia.⁷⁴

This case note uses similar processes as the studies done by Thomas Kane, Douglas Staiger, and Stephanie Reigg and Jeffrey Weinstein.⁷⁵ Both studies used official records of the department of taxation to determine housing prices; however these same records were not available on a large scale for this case note. Therefore, this case note uses the market value listed on the real estate website, Zillow.com, for housing prices and comparisons. However, the comparison process utilized in the analysis is the same as used by the studies previously mentioned. This process will show that the uncertainty of school redistricting affects Charlotte real estate much more than Columbia real estate and the effects of this uncertainty on the utilization, or underutilization of land proves that the uncertainty created post-*Brown* still affects both areas today.

68. Real estate agents may consider this area "Sherwood Forest" as opposed to "Cotswold." See *Newest Listing in Sherwood Forest*, ZILLOW.COM, <http://www.zillow.com/sherwood-forest-charlotte-nc/>, for a more detailed map outlining the neighborhoods. But as many native Charlotteans would regard both neighborhoods as "Cotswold" I will use that name to mean both areas.

69. See *infra* Map 1.

70. See Debe Maxwell, *What's in a Charlotte Neighborhood? Discover Cotswold*, ACTIVE RAIN (Jul. 10, 2011), <http://activerain.com/blogsvie/2393220/what-s-in-a-charlotte-neighborhood-discover-cotswold>.

71. "Uptown" and "Downtown" are used interchangeably to refer to the center of Charlotte. See *History Timeline, Down Become Up*, CHARLOTTE-MECKLENBURG STORY, <http://www.cmstory.org/history/timeline/default.asp?tp=19&ev=370&evArrayNum=10> (last visited Apr. 27, 2013).

72. See Maxwell, *supra* note 70.

73. See *infra* Map 2.

74. *Pointers Run*, ADVANCED READING COLUMBIA PROJECT, <http://advancedreadingcolumbiaproject.wikispaces.com/Pointers+run> (last visited Apr. 27, 2013).

75. See Kane et al., *supra* note 5; Jeffrey Weinstein, *The Impact of School Racial Compositions on Neighborhood Racial Compositions: Evidence from School Redistricting* (Nov. 29, 2010) (unpublished manuscript).

IV. Analysis

A. *School Redistricting Has a Significant Effect on the Real Estate Market in Mecklenburg County*

i. Studies on the Relationship between Housing Prices and School Assignment in Mecklenburg County

Because the court-imposed desegregation order at issue in *Swann* basically created control groups, economists Thomas Kane, Douglas Staiger, and Stephanie Reigg felt that the district was the perfect location to study the relationship between school characteristics and housing prices.⁷⁶ They found that the property values during their study were indirectly tied to home values.⁷⁷ The study found that “one-student level standard deviation difference in a school’s mean test score was associated with a ten-percentage point difference in house value.”⁷⁸ They further found that “changes in the mean characteristics of the students assigned to one’s school also ha[d] large impacts on housing prices, although prices react with a several year lag.”⁷⁹ However, they also found that “much of the apparent difference in housing value associated with schools is the result of residential sorting.”⁸⁰ The residential sorting tends to spill over to the entire neigh-

76. See Kane et.al., *supra* note 5. The authors gave two main reasons, both relating to the desegregation order. First neighborhoods were sometimes divided by school boundaries such that the effects of the school districting could be more accurately measured. *Id.* at 1-2. Second, rapid population growth and demographic change led to changes in boundaries while still maintaining racial balance. *Id.* at 2. This dynamic more clearly evidences the impact of school boundary changes on housing prices. *Id.* However, the economists were not the first to study the effect of school racial compositions or school desegregation on neighborhood housing prices or racial sorting. See, e.g., Nathaniel Baum-Snow & Byron F. Lutz, *School Desegregation, School Choice, and Changes in Residential Location Patterns by Race*, 101 AM. ECON. REV. 3019 (2008) (finding increases in black populations mostly in non-southern central city school districts and declines in white populations mostly in southern central city school districts due to school desegregation); William T. Bogart & Brian A. Cromwell, *How Much is a Neighborhood School Worth?*, 47 J. URBAN ECON. 280 (2000) (finding decreases in housing prices in neighborhoods subject to redistricting; but found mixed evidence that school racial compositions affected housing values); Charles T. Clotfelter, *The Effect of School Desegregation on Housing Prices*, 57 REV. ECON. & STAT. 446 (1975) (finding a negative relationship between the percent of black students at the assigned school and housing prices); H. Leroy Gill, *Changes in City and Suburban House Prices During a Period of Expected School Desegregation*, 50 SOUTH. ECON. J. 169 (1983) (finding slower increases in housing prices in cities, as opposed to their neighboring suburbs, which were expected to undergo school desegregation).

77. Kane et al., *supra* note 5.

78. *Id.* at 30.

79. *Id.*

80. *Id.* This sorting is significant along racial lines due in response to school assignment. The researchers found that the race of the neighborhood tends to revert to the percent of minority assignments in the assigned school. *Id.* at 29.

borhood, regardless of the actual school to which the house is districted.⁸¹

The *Swann* desegregation order ended in 2001.⁸² At that time, CMS was ordered to dismantle the previous race-based assignment plan.⁸³ Following the dismantle, CMS implemented a school-choice plan in which students were guaranteed a seat at one of three schools closest to their residence and were allowed to enter a lottery to attend another school in the district.⁸⁴ Economist Jeffrey Weinstein studied the effect of racial composition of elementary schools after the reassignment on the assigned neighborhoods.⁸⁵ Mr. Weinstein found that a ten percentage point increase in the percent of the elementary school composed of African-Americans corresponded with an approximately 1.2 percentage increase in the percent of African-American residents in the corresponding neighborhood five years following the termination of the busing to integrate policy prior.⁸⁶ He also found consistent long term responses to changes in the racial composition of the assigned elementary school, such that the increase in minority composition of the school led to movement of non-African-American residents moving from that neighborhood to neighborhoods in which the assigned elementary school was decreasing in percentage of minority composition.⁸⁷ However, African-American residents did not change residences in response to school reassignments.⁸⁸

81. The effect of the high school assignment and percent minority assigned to said school on the parcel actually assigned are no different than the effect of high school assignment and percent minority assigned to said school on the entire neighborhood. *Id.* The uncertainty of the entire neighborhood to be assigned to said school can explain this phenomenon. *Id.* at 28.

82. *Id.* at 1.

83. Weinstein, *supra* note 75 (manuscript at 2)

84. Due to the new choice, roughly half of the families within the district were reassigned to different schools. The reassignments caused large changes in the racial composition of schools throughout the district. *Id.* (manuscript at 2).

85. Weinstein studied the district from 2001, when the choice plan was implemented until 2006. *See id.*

86. The effect of this correlation grew over time. *Id.* (manuscript at 29).

87. *Id.*

88. This finding tends to suggest that school reassignments are more important to non-African-Americans. *Id.* This finding, along with the findings in GARY ORFIELD & SUSAN E. EATON, DISMANTLING DESEGREGATION: THE QUIET REVERSAL OF BROWN V. BOARD OF EDUCATION (1996), Charles T. Clotfelter et al., *Federal Oversight, Local Control, and the Specter of "Resegregation" in Southern Schools*, 8 AM. LAW & ECON. REV. 347, 389 (2006), and Byron F. Lutz, *Post Brown vs. the Board of Education: The Effects of the End of Court-Ordered Desegregation* (Fed. Reserve Board, Working Paper No. 2005-64, 2005), support the theory that neighborhood racial sorting may occur at the termination of court-ordered racial desegregation and school racial compositions change.

ii. Recent Redistricting Issue and the Case Study Neighborhoods

The data found in this study may explain some of the effects felt in a new area affected by potential redistricting uncertainty. The Cotswold area, within Charlotte, was considered the up-and-coming area approximately five years ago.⁸⁹ Unlike the Myers Park neighborhood, in which the homes are older, more expensive, and tend to not be on the market for long periods of time, the neighborhoods within the Cotswold area have more available real estate and tend to have younger residents.⁹⁰ However, many of these neighborhoods are now facing uncertainty in school reassignment.⁹¹ In the fall of 2010, CMS announced plans to redraw boundaries moving these neighborhoods from the Myers Park High School district to the East Mecklenburg High School district.⁹² The reasoning behind this redistricting was two-fold. First, the district was facing a significant decrease in budget from not only the state but also the county due to the recession and needed to cut a substantial amount of spending.⁹³ The proposed measures would have saved up to 3.3 million dollars the year they went into effect and up to six million dollars every year thereafter.⁹⁴ Second, the district wanted to address more long-term problems, including poor academic performances at the majority of schools and overcrowding.⁹⁵

Parents of school aged children, who owned homes in the affected areas reacted to the proposals with hostility.⁹⁶ Their reaction had two main causes. First, the two high schools involved, Myers Park High and East Mecklenburg, were quite different academically.⁹⁷ While Myers Park High consistently scored the best academically in the county

89. See *supra* note 68 and accompanying text.

90. *Id.*

91. See *Debate Heats up over Charlotte School Zone Redistricting*, *supra* note 50.

92. *Id.*; Sarah Gilbert, *Board to Vote on School Changes Nov. 9*, SOUTH CHARLOTTE WEEKLY (Nov. 4, 2010) <http://www.thecharlotteweekly.com/education/2010/11/board-to-vote-on-school-changes-nov-9/>; Ann Doss Helms, *East Meck: Not So Dinky*, CHARLOTTE OBSERVER (Aug. 21, 2010), <http://obsyour-schools.blogspot.com/2010/08/east-meck-not-so-dinky.html>.

93. CMS faced a shortfall of as much as one hundred million dollars, including forty-seven and a half million dollars from the federal government in recovery funds that were not renewed for the following year. See sources cited *supra* note 92.

94. CMS was concerned about long-term solutions to the financial crisis as there was constant uncertainty regarding the future of Wells Fargo in Charlotte (Wells Fargo bought Wachovia in 2008; prior to their sale, Wachovia had been based in Charlotte for over a decade and provided not only jobs but a steady source of tax income).

95. See sources cited *supra* note 92.

96. See sources cited *supra* note 92.

97. See *Best High Schools in Charlotte-Mecklenburg School District*, U.S. NEWS & WORLD REP., <http://www.usnews.com/education/best-high-schools/north-carolina/districts/charlotte-mecklenburg-schools> (last visited Apr. 27, 2013).

and was well-respected by universities, East Mecklenburg had, until recent years, underperformed and was not generally well-respected by universities in the state.⁹⁸ Second, the area was up-and-coming and there was a fear that redistricting of the area would diminish home values, such that the area would become similar to those studied by Kane, Weinstein, and company.⁹⁹ The most important aspect of this issue is that parents were not the only ones with this fear; while not as vocal, parental homeowners in the affected areas also feared what the redistricting would mean for them.¹⁰⁰

B. School Redistricting Has a Negligible Effect on the Real Estate Market in Howard County

i. Population Growth

While CMS has been continuously studied in terms of the relationship between school assignment and school racial compositions and housing prices, the same cannot be said about HCPSS. While HCPSS was at one point a dual school system, they voluntarily integrated ten or eleven years after the *Brown v. Board of Education* decision.¹⁰¹ However, Howard County did face its own issue, in the form of exponential growth. The population in 1970 was only 62,394.¹⁰² It increased to 118,572 in 1980, 187,328 in 1990, 247,842 in 2000 and 285,600 in 2010. HCPSS struggled to keep up with the increase in population.¹⁰³ Since these population increases did not occur equally in every school district assignment, but instead occurred in spurts in different areas at different times, the district has redrawn boundary lines multiple times within the past twenty years.¹⁰⁴ The Village of River Hill, of which Pointers Run is a part, began construction in 1990 and finished in approximately 1997. It is one of the more affluent villages in Columbia and as such, a desirous location to move to.¹⁰⁵ The population

98. The rankings do not seem to be consistent with the numbers. If we look at the numbers, comparatively, Myers Park High ranks the highest in both college readiness at 55.0% (as opposed to 28.1% at East Mecklenburg and around 20% for the state average) and in Advanced Placement tests taken and passed at 63% and 52%, respectively (as opposed to 38% and 25%, respectively, at East Mecklenburg). *Id.*

99. See Maxwell, *supra* note 70; *Debate Heats up over Charlotte School Zone Redistricting*, *supra* note 50.

100. See *Debate Heats up over Charlotte School Zone Redistricting*, *supra* note 50.

101. See Burris, *supra* note 64; Penn, *supra* note 65.

102. PROJECTIONS 1970-2040: TOTAL POPULATION PROJECTIONS, MARYLAND DEPARTMENT OF PLANNING, http://www.mdp.state.md.us/msdc/popproj/TotalPop_2040.xls (last modified Dec. 2010).

103. *Id.*

104. Toth, *supra* note 50.

105. See *About the Village*, THE VILLAGE OF RIVER HILL, <http://www.villageofriverhill.org/about-the-village/> (last visited Apr. 27, 2013); *River Hill Village Center*, COLUMBIA VILLAGE CENTERS, http://www.columbiavillagecenters.com/scripts/villagepublic.pl?center_id=5&function=event (last visited Apr. 27, 2013); Arlen Robinson, Reply to *What is the Best Zip Code in Columbia, MD*

growths and the need to redistrict certain areas has become more of a problem in recent years.¹⁰⁶

ii. Redistricting in Howard County

The redistricting plans proposed by the school district have met some resistance. The issue most heard in the redistricting proposals from HCPPS is not the quality of the school or home values, but rather, socialization issues.¹⁰⁷ The parents and students who fought against the redistricting plans wanted to keep their children at the same school they currently attended and had been for at least a year.¹⁰⁸ They felt strongly that the district should not split students who currently attended high school together.¹⁰⁹ The schools are fairly similar although there is a bit of difference in the academic performance of River Hill High and Atholton High.¹¹⁰ Nonetheless, there did not seem to be much of an outcry regarding the redistricting of the

to Move too?, TRULIA.COM (Nov. 6, 2009), http://www.trulia.com/voices/Schools/what_is_the_best_zip_code_in_columbia_md_to_move_-13248 (Real Estate Agent, Arlen Robinson, replying that the River Hill zip code, 21044, has more expensive homes).

106. The reasons for why the redistricting has become more of an issue in greater years is not addressed by Ms. Toth, nor has any other journalist or individual put forth reasons for why there has been greater resistance in recent years. Cf., e.g., Toth, *supra* note 50.
107. Tanika White, *Residents Get Final Shot at Redistricting*, BALT. SUN (Jan. 14, 2002), http://articles.baltimoresun.com/2002-01-16/news/0201160420_1_wilde-lake-atholton-howard-high-school; Lorraine Gingerich, *For Sophomores at River Hill, a Sign of Relief*, BALT. SUN (Jan. 31, 2002), http://articles.baltimoresun.com/2002-01-31/news/0201310073_1_river-hill-clarksville-hill-high; Larry Carson, *School-Boundary Bitterness Affects Races for City Council*, BALT. SUN (Oct. 12, 2002), http://articles.baltimoresun.com/2002-10-18/news/0210180522_1_river-hill-atholton-committee-members.
108. Unlike the parents involved in the redistricting issues in CMS, the majority of the individuals involved in this were parents of current high school students. See sources cited *supra* note 107.
109. See sources cited *supra* note 107. This argument rarely was presented by parents in CMS.
110. Of the River Hill High School students, 64.2% are ready for college compared to 49.1% at Marriotts Ridge High School, and 42.9% at Atholton High School. River Hill has the highest tested and passage rate for Advanced Placement Tests at 71% and 62%, respectively, with Marriotts Ridge slightly behind at 52% and 48%, respectively, and Atholton at 47% and 41%, respectively. *Howard County Public Schools*, U.S. NEWS AND WORLD REP., <http://www.usnews.com/education/best-high-schools/maryland/districts/howard-county-public-schools> (last visited Apr. 27, 2013). In comparing the River Hill test scores and the Atholton test scores on the Maryland High School Assessments (HSA), the schools seem to be comparable in terms of qualified teachers, but the student HSA scores differ rather significantly in terms of the percent of the student population that tests "proficient," as opposed to "advanced," on the subjects. See MARYLAND STATE DEP'T OF EDUC., MARYLAND REPORT CARD, HOWARD COUNTY 2011 PERFORMANCE REPORT, http://www.hcpss.org/academics/perf_report_2011.pdf.

Pointers Run neighborhood from River Hill High to Atholton High.¹¹¹

This reaction, or lack thereof, may be explained by the history of Columbia. The city was created as a planned community in 1967, intended to eliminate racial, religious and class segregation that was then prevalent across most of the country.¹¹² As part of the plan to eliminate racial and class segregation, the planners intentionally went against the historic and current plan of placing public housing in slums, vacant areas, and lower-income areas and instead planned public housing near the housing purchased by the middle and upper classes. By doing this, neighborhoods would be melded into a community and all of the children in Columbia would be ensured the same high-quality of education, unlike their counterparts in much of the country.¹¹³ Due to this background, the change or uncertainty of school districting and assignment is felt less by Columbia than by their counterparts in other parts of the country, including Charlotte.

C. *Comparing Differences in Housing Prices in the Uncertain Areas*

Turning to the two areas in which school boundary lines seem to have been uncertain for the last few years, the effects seem to be greater in the Charlotte neighborhood of Cotswold, as opposed to their counterparts in the Columbia neighborhood of Pointers Run.

Starting with the Pointers Run neighborhood, the real estate values do not appear to be impacted by either the 2002 redistricting or by continued uncertainty as to the districted high school.¹¹⁴ In fact,

111. See BOARD OF EDUCATION OF HOWARD COUNTY, Minutes (Jan. 15, 2002), available at <http://www.boarddocs.com/mabe/hcpssmd/archive.nsf/Public?OpenFrameSet>. Those opposing the redistricting of the Planter's Run area from River Hill High School to Atholton High School supported a recommendation to wait a year to review the magnet program that was currently at River Hill, while others supported the move because Atholton was closer to the area than River Hill. There seemed to be more support for a consistency in the feeding system, or in the school to which each neighborhood is districted, as opposed to support for retaining the Pointer's Run neighborhood in River Hill. *Id.* The desire for consistency rather than constantly changing the assigned schools of certain neighborhoods was echoed by Virginia Olsen at a Board Meeting in 2005. See BOARD OF EDUCATION OF HOWARD COUNTY, Minutes (Nov. 8, 2005), available at <http://www.boarddocs.com/mabe/hcpssmd/archive.nsf/Public?OpenFrameSet>.

112. JOSEPH R. MITCHELL & DAVID STEBENNE, *NEW CITY UPON A HILL: A HISTORY OF COLUMBIA, MARYLAND* (2007). Much of the county faced leap-frog or spot development, meaning that there was little connection between subdivisions. Developer James Rouse wanted to change this, such that there would be cohesion throughout the development. *Id.* See above regarding the prevalence of segregation in America at that time.

113. *Id.* It is interesting to note that even with this intent, there was still some segregation surrounding the city, which eventually became part of Columbia. See Burriss, *supra* note 64; Penn, *supra* note 65.

114. See results on Zillow regarding two properties in this neighborhood that had recently been available for sale. First, 6522 River Run, Columbia, MD

home prices in the neighborhood have consistently exceeded home prices in the surrounding area before, during, and after the recession.¹¹⁵ Currently, homes for sale in the neighborhood continue to remain priced higher than homes in the surrounding areas despite potential redistricting and impacts of the recession.¹¹⁶

The same cannot be said of the Cotswold neighborhood as there seems to be a clear change in housing prices within the homes listed in the Cotswold area. Those which are districted to Myers Park High School tend to be significantly higher than those districted to East Mecklenburg.¹¹⁷ Comparing two of these houses, the square footage of the homes and the lots are almost identical, the amount of bedrooms and bathrooms is the same, and both homes are from the same time period, the mid-1960s.¹¹⁸ Despite the similarities, the price for one is approximately ninety thousand dollars more.¹¹⁹ Moreover, this is true throughout the Myers Park area.¹²⁰ The general map shows that the further the house is into the Myers Park school district, including the "Foxcroft," "Wendover," "Providence Park," and "Myers

21044. ZILLOW.COM, http://www.zillow.com/homedetails/6522-River-Run-Columbia-MD-21044/37005090_zpid/ (last visited Apr. 23, 2013). Looking at the Zillow estimates of how the property value has changed over the past ten years, it is clear that the uncertainty did not affect the property. Second, 6521 Ocean Shore Ln, Columbia, MD 21044. ZILLOW.COM, http://www.zillow.com/homedetails/6521-Ocean-Shore-Ln-Columbia-MD-21044/37005234_zpid/ (last visited Apr. 23, 2013). The same trend appears here as in the previous listing. Although the first house is listed for much less than the second, I believe that it has more to do with the current state of the house and square footage as opposed to external factors. For instance, the second house has an updated kitchen, with tile floors and granite countertops, where the first does not.

115. See *supra* note 114. For reference, 2012 is used as "after" the recession due to rises in housing prices in the area.
116. See *Map of Area with Homes for Sale or Presale*, ZILLOW.COM, <http://www.zillow.com/columbia-md/> (last visited Apr. 23, 2013).
117. Compare 926 Lynbrook Dr, Charlotte, NC 28211, ZILLOW.COM, http://www.zillow.com/homedetails/926-Lynbrook-Dr-Charlotte-NC-28211/6273537_zpid/ (last visited Apr. 23, 2013), with 4918 Charmapeg Ave, CHARLOTTE, NC 28211, Zillow.com, http://www.zillow.com/homedetails/4918-Charmapeg-Ave-Charlotte-NC-28211/6251120_zpid/ (last visited Apr. 23, 2013).
118. See *supra* note 117. The only differences are the granite countertop in the second home and a newer patio area in the first home, otherwise they are almost identical.
119. See *supra* note 117. It is possible that other external forces may be at play other than the schools to which the home is districted; however looking at an overall map of the area and filtering the results so that only three plus bedroom, two plus bathroom, eighteen hundred to two thousand square feet homes still shows the same result. See *Map of Area with Homes for Sale or Presale*, ZILLOW.COM, http://www.zillow.com/homes/for_sale/3-beds/2-baths/1800-2000_size/days_sort/35.20348,-80.729856,35.124612,-80.867357_rect/12_zm/.
120. There is also a map included in the appendix of this paper which shows the exact area in question, but without the names of the neighborhoods. See *infra* Map 1; see also *Map of Area with Homes for Sale or Presale*, *supra* note 119.

Park” neighborhoods, the greater the homes price.¹²¹ These areas, unlike the Cotswold area, are the least likely to be redistricted to a different school due to their proximity to Myers Park High.¹²² Therefore based on this analysis, it seems that in Charlotte, unlike Columbia, school assignment is an important factor in the cost of real estate.¹²³

D. Explaining the Difference in Reaction by Real Estate and What this Means for Land Development in Charlotte and Columbia.

The difference in the real estate reactions to changes in school boundary lines and districted schools in Charlotte and Columbia is extreme. Housing prices seem highly or almost directly associated to the school assignment in Charlotte, while school assignment has little to no effect on the housing prices in Columbia.¹²⁴ One of the biggest differences between the two cases is the difference in the schools involved. While there are academic differences, as measured by both U.S. News and World Report and the Maryland High School Assessments, the difference between River Hill High and Atholton High is minimal as the schools provide a fairly similar education.¹²⁵ Conversely, the academic differences, as measured by U.S. News and World Report, between Myers Park and East Mecklenburg is so substantial that the education received at Myers Park is considered vastly superior to that of East Mecklenburg.¹²⁶ The extreme difference in

121. See *Map of Area with Homes for Sale or Presale*, *supra* note 119.

122. Weinstein, *supra* note 75.

123. This study is not nearly as in-depth an analysis as both of the previous mentioned studies. However, looking at home prices in this neighborhood as compared to those in the Myers Park neighborhood, which seem to be slightly higher, as opposed to those in the Sherwood Forest and Cotswold area districted to Myers Park High as opposed to the prices in the Sherwood Forest area districted to East Mecklenburg seems to support and agree with their, more detailed findings.

124. See *supra* Part IV.C.

125. See *supra* Part IV.B.

126. See *supra* Part IV.A. Ironically, Charlotte-Mecklenburg has tests similar to the HSAs, discussed *supra* note 110; Charlotte-Mecklenburg gives End of Course (EOC) tests in English I, Algebra I, and Biology I. However in the “report card” developed by the CMS administrators, CHARLOTTE-MECKLENBURG SCHOOLS, 2011-2012 PRELIMINARY END-OF-YEAR SCHOOL ASSESSMENT RESULTS (Aug. 15, 2010), <http://www.cms.k12.nc.us/cmsdepartments/accountability/Documents/2011-12%20End-of-Year%20Results.pdf>, there is no breakdown of the rates by school. Instead, the report card concerns itself more with the performance of the students overall, than with the performance of the different identified races, African-American, Hispanic, and Caucasian, and the performance of those identified as economically disadvantaged and not economically disadvantaged, overall on all of the tests given, and finally focuses on certain schools’ score improvements from the previous year. This report card indicates that their administration realizes there is still some disjointedness in the education received not only by the different races but also by the different incomes. As compared with the historical administrations of CMS, the new administrations seem intent on

the education between the two schools in CMS is one reason for why housing prices are so directly connected to school assignment, while the consistency in the education in the two schools in HCPSS explains why that same connection is not present in Columbia.

Further, as both the studies by Kane and Weinstein alluded, there is also evidence that there is a new, continual sense of segregation in housing patterns.¹²⁷ As shown in Map 2 of the Appendix, of the 22 schools in the district, only three of the four year high schools, Independence High, South Mecklenburg High, and Butler High, along with Cato Middle College High School,¹²⁸ were close to having an equal amount of Caucasians and minorities.¹²⁹ Since the system no longer engages in “busing to integrate”, as the court-ordered desegregation plan came to be known, these schools more accurately represent their feeder neighborhoods.¹³⁰ Therefore, the above statistic seems to suggest that individual moves are responsible for the creation of specific areas for the different races or that there is a white flight to certain school assigned areas.

As both Kane and Weinstein noted, neighborhoods in and around the school boundary felt the effects of the school.¹³¹ With more reputable schools feeling the effects of overcrowding and the Board’s continued concern, the boundary lines for these schools are shrinking

ridding the gaps in education, as identified through testing, between the different races and different classes. *Id.* There are significant gains over the past five or six years in minority and economically disadvantaged test scores. *Id.* at 10.

127. See *supra* note 126; see also, Anne Doss Helms, *CMS: School by Racial Breakdown*, CHARLOTTE OBSERVER (Oct. 6, 2011), <http://www.charlotteobserver.com/2011/10/05/2666659/cms-schools.html>. Unfortunately, the numbers for Olympic High School are a little disjointed due to a program instituted by the Coalition of Essential Schools and the Bill and Melinda Gates Foundation in 2005. See OLYMPIC COMMUNITY OF SCHOOLS, <http://www.maagcom.com/olympic/ocos.htm>, for more information on this design and why they think having to sit through 5 valedictorians is a good idea. However, pooling together the information from the website, the physical high school has 45.2 percent African-American, 5.4 percent Asian, 22.2 percent Hispanic, and 23 percent Caucasian. See Helms, *supra*.

128. Cato Middle College High School is only offered for Juniors and Seniors. See *Cato Middle College High School*, <http://schools.cms.k12.nc.us/catoHS/Pages/AboutOurSchool.aspx> (last visited Apr. 27, 2013). Opened in 2007, the program offers a maximum of one hundred students per grade the opportunity to earn college credit during this time through the local community college, Central Piedmont Community College (“CPCC”).

129. See *infra* Table 1.

130. Although there are remnants of the magnet program that was in place prior to the dismantle, the majority of students attend their designated “home schools” as defined by the CMS Administration. See Weinstein, *supra* note 75 (manuscript at 4-5).

131. See Kane et al., *supra* note 5, at 30-31; Weinstein, *supra* note 75 (manuscript at 4-5).

inwardly.¹³² As such, the homeowners who live closest to boundary lines or live in areas where there is uncertainty as to long-term school assignment and the uncertainty is moving from one of the favorable schools to one of the not so favored and lesser performing schools do not have as much incentive to make sure that their land is used best.¹³³ In so doing, the land can be used inadequately or underutilized. At such point, there is potential that neighborhoods that once were new and utilized to their maximum potential will deteriorate, and the land will ultimately be underutilized.¹³⁴ This argument is furthered by looking at houses closer to the high school which will likely never be redistricted from Myers Park High.¹³⁵ One such home, which is underutilized, and therefore selling for under the maximum price of a fully utilized house is still listed for higher than either of the other aforementioned homes in Charlotte.¹³⁶

Unlike the uncertain area of Cotswold in Charlotte, the Pointers Run neighborhood does not seem to suffer from the same detriment. The two homes listed within the neighborhood seem to match the prices of similar homes for sale of houses located firmly within the

132. See *supra* note 50 (the CMS administration has not yet changed the school assignment boundary lines, but will likely do so in the future to solve issues of overcrowding).

133. See Kane et.al., *supra* note 5, at 22-23. Just as there are certain external factors that foster incentivizing certain activities, there are also certain external factors that foster disincentivizing certain activities. In this case, since the border neighborhoods and potentially the uncertain areas would not get as much return on investment or any return for that matter with such items as repairs, updates, and upgrades, we can say that the uncertainty felt by homeowners in Charlotte disincentivizes homeowners from utilizing the land. See *id.*

134. See *id.* The very houses that were used prior to demonstrate the differences in housing prices can be used to show tendencies of this. See *supra* note 117. First, as stated prior, the kitchen has not been completely updated. While the appliances have certainly been updated, the countertop is not granite and the layout is slightly off (there seems to be a lack of cohesion). Since white cabinets have become very popular in the South in recent years and looking at the cabinets themselves, it seems that they have been upgraded. Meanwhile, in the other house, the kitchen seems to be much smaller, but everything has been upgraded, including granite countertops. The house overall seems much more cluttered and the rooms seem to be a little tighter (or the furniture is just that much bigger). The house, while having undergone a bit of a renovation, seems to be in need of more renovations. This may be because this land is in an area where there is uncertainty regarding future school district such that any renovations would not be recuperated through the sale of the property.

135. See Kane et.al., *supra* note 5, at 22-23. While there may come a time in the future when some of this property may be redistricted realistically redistricting does not seem to be an option. See sources cited *supra* note 50.

136. See 1787 Jameston Dr, Charlotte, NC 28209, ZILLOW.COM, http://www.zillow.com/homedetails/1787-Jameston-Dr-Charlotte-NC-28209/6244740_zpid/. Although this has does have more bedrooms, the house does not look like it has been renovated for at least twenty years but still is listed for higher than the other two homes and is assessed at a much higher bracket.

River Hill High School district.¹³⁷ The similarity of prices suggests that there is less concern about where school district lines are drawn.¹³⁸ The history of Columbia may explain this difference, since the town was designed to minimize the racial, ethnic, and class segregation that was and is prevalent throughout the country.¹³⁹ One of the major goals of the planners was to ensure that every student received the same quality education, regardless of school.¹⁴⁰ Because this was and is the goal throughout Columbia and now Howard County, there tends to be less of a difference between the schools.¹⁴¹ As such, there is not the same racial dissonance among the schools in Howard County, as can be seen in the Appendix.¹⁴² Without as much of a difference between the neighborhood schools, individuals do not face the same challenges or at least challenges to the same extent regarding return on investment. Rather, homeowners are incentivized to not only maintain the upkeep of the home but to make any and all necessary changes and upgrades to the home in order to receive a higher price.¹⁴³

137. *Compare* 6521 Ocean Shore Ln, Columbia, MD 21044, ZILLOW.COM, http://www.zillow.com/homedetails/6521-Ocean-Shore-Ln-Columbia-MD-21044/37005234_zpid/ (last visited Apr. 24, 2013), in Pointers Run, *with* 12812 Brighton Dam Rd, Clarksville, MD 21029, ZILLOW.COM, http://www.zillow.com/homedetails/12812-Brighton-Dam-Rd-Clarksville-MD-21029/37044624_zpid/ (last visited Apr. 24, 2013), and 6004 Winter Grain Path, Clarksville, MD 21029, ZILLOW.COM, http://www.zillow.com/homedetails/6004-Winter-Grain-Path-Clarksville-MD-21029/37003680_zpid/ (last visited Apr. 24, 2013). Although the prices are a little different, it has more to do with the size, since there are currently no houses listed for sale that are more comparable than these. However, the tax assessment of Ocean Shore Lane and Winter Grain Path were assessed at similar tax rates. This suggests that any uncertainty in school districting has minimal effect on the real estate.

138. *See supra* note 108, which also suggests that the major concerns regarding districting have more to do with keeping students together from one neighborhood and consistency for students throughout their years in either elementary, middle, or high school.

139. *See* MITCHELL & STEBENNE, *supra* note 112 at 165.

140. *See infra* Map 2.

141. *See Howard County Public Schools, supra* note 110. There is a significant difference between the better high schools, such as River Hill, Marriotts Ridge, Centennial, Atholton, and the lowest performing schools, such as Wilde Lake, Hammond High, Oakland Mills, and Reservoir High. However, the area involved in this study has little chance of getting redistricted to any of these schools. These schools are beyond the scope of the particular neighborhood and school districts previously addressed.

142. *See infra* Table 2.

143. There is not as much concern with over-improving the home, as Howard County, and Columbia in particular has been considered one of the best places to live in recent years. *See, e.g., Best Place to Live, 2010*, CNNMONEY, <http://money.cnn.com/magazines/moneymag/bplive/2010/> (last visited Apr. 24, 2013) (ranking Ellicott City second); *Best Places to Live, 2008*, CNNMONEY, <http://money.cnn.com/magazines/moneymag/bplive/2008/> (last visited Apr. 24, 2013) (ranking Ellicott City eighth); *Best Places to*

However, there is evidence that the explanation may not be simply based on racial segregation but rather income segregation that ultimately results in racial segregation. A comparison of the percent of students at the high schools at issue in this note on free and reduced lunch, through the federal FARMS program, seems to suggest that income segregation may be the ultimate issue.¹⁴⁴ Comparing Table 1 with Table 3 shows that the CMS high schools that serve predominantly minority areas also are those that serve a significant number of lower income students.¹⁴⁵ Likewise, a comparison of the students at the high schools in HCPSS, as shown in Table 2 and Table 4, suggests that there is not as much of a discrepancy, such that there is not the same income segregation.¹⁴⁶

But the comparison of the districts overall suggests that there is a difference in the income of the districts as a whole. Comparing the districts' overall percentages of students on free and reduced lunch, there is a clear difference between the average median incomes. In Mecklenburg County the percent of students on free and reduced lunch seems to stay around the fifty percent mark, while in Howard County it seems to stay around the ten percent mark.¹⁴⁷ This discrepancy may contribute to the difference in the reaction of real estate to the specific school districting between the two counties and may explain why the association is much stronger in Mecklenburg County and much weaker in Howard County.

E. Potential Future Ramifications

While this study deals only with two areas and is much smaller in scope, these conclusions, if representative of the country as a whole, may show that societal choices have long-term external effects. However, this conclusion needs more research into potential effects felt within school districts throughout the country. These studies should look at other school districts throughout the country which either chose to integrate or to fight integration and how that choice is playing out to this day. They should address whether the conclusions from this note are typical of the country as a whole or rather just local-

Live, 2006, CNNMONEY, <http://money.cnn.com/magazines/moneymag/bplive/2006/> (last visited Apr. 24, 2013) (ranking Ellicott City fourth).

144. See *infra* Table 6. Eligibility for these programs is determined by predetermined guidelines set by the USDA on a yearly basis. One of the factors for this is the federal poverty lines for households of differing size. For more information and an eligibility table, see Food and Nutrition Service, USDA, Child Nutrition Programs—Income Eligibility Guidelines, 76 Fed. Reg. 16724 (March 25, 2011).

145. Compare *infra* Table 1 with *infra* Table 3.

146. Compare *infra* Table 2 with *infra* Table 4.

147. Compare *infra* Table 4 with *infra* Table 6. This finding may suggest that individuals in the lower income bracket may be unable to move into the county, such that the county as a whole engages in affluent segregation.

ized to these two counties. Previous studies have focused on how school districting tends to influence the racial composition of the feeder neighborhoods; however, future studies need to go beyond the superficial to discuss how the differences in racial composition ultimately affect the real estate and the utilization of this real estate.

What this case study does show is that hostility over attempts to re-district in the Cotswold area and other neighborhoods similar to it in Mecklenburg Country will continue until there is a significant change in the school system or in the culture. With certain parents actively reacting to school districting and the real possibility of the continuance of this practice, the hostility to redistricting and the potential ramifications on real estate will continue. There is a real possibility that real estate prices in these areas will continue to fluctuate along with potential underutilization of land such that growth of the Cotswold area may be significantly hampered.¹⁴⁸

V. Conclusion

Segregation de jure has ended in much of the country.¹⁴⁹ However, individuals in many parts of the country, including the South, continue the culture of segregation through residential segregation by income or self-segregation.¹⁵⁰ While the influences of this segregation can ultimately be connected to certain practices begun during racial segregation periods, there has been a shift to more residential segregation based on income. These influences include exclusionary zoning practices, location of public housing, discriminatory homeownership practices, attitudes and preferences towards housing location, and gentrification.¹⁵¹ While residential segregation may account for part of the reason for the racial segregation found in many educational systems around the country, it is not the entire reason.¹⁵² What has been called self-segregation, or the movement of non-African-Americans individuals from neighborhood either actually districted to schools considered undesirable or associated with individuals districted to such schools, seems to be a major factor in the real estate market in Charlotte.¹⁵³

As such, real estate prices are conclusively indirectly affected by school boundary lines at the time and will continue to be in the near

148. See Background *supra* Part IV.

149. I cannot assert that it has ended in all of the country due to recent hostilities towards immigrants and the ability to potentially segregate based on their illegal status.

150. See Residential Housing Patterns in the United States *supra* Part II.B.

151. See Background *supra* Part II.

152. See Background *supra* Part II.

153. See Kane et.al., *supra* note 5, at 4; Weinstein, *supra* note 75 (manuscript at 2).

future.¹⁵⁴ While the real estate market in Charlotte reacts to any discussion of redistricting, regardless of the outcome of the redistricting, neither talk of redistricting nor actual redistricting in Columbia seems to cause such a reaction on the real estate market.¹⁵⁵ Because school districting or redistricting has a clear effect on the real estate market in Charlotte, areas in which there is consistent uncertainty as to potential school redistricting tend to have lower housing values and there is greater potential for underutilization of property. Because the Columbia real estate market does not react to changes or potential changes in school districting like Charlotte, there is less potential for underutilization or undergrowth of land. Therefore, uncertainty in particular areas regarding school districting or redistricting plans does not necessarily affect real estate prices or use of land. Rather, the effect of this uncertainty depends upon the particular area in question and the difference in the quality of education that a student may receive at the different schools. If there is a significant difference in the quality or perceived quality, then the real estate market in the area of uncertainty will likely feel the effects whereas if there is not a significant difference in the quality or in the perceived quality, the real estate market in the area of uncertainty will not likely feel any effect.¹⁵⁶ The former effect may also lead to differences between the valuation and utilization of property in the border areas as opposed to areas more closely situated to the favored high school.¹⁵⁷

The history of the areas suggests that this difference may lie in the different decision to the societal choice forty years ago between integration or fighting integration in schools. The societal choice of each area is still playing out and the effects felt are much different in Howard County, where they implemented voluntary integration, and in Mecklenburg County, where they fought to keep segregation all the way to the Supreme Court.

154. See Kane et.al., *supra* note 5, at 4; Weinstein, *supra* note 75 (manuscript at 2).

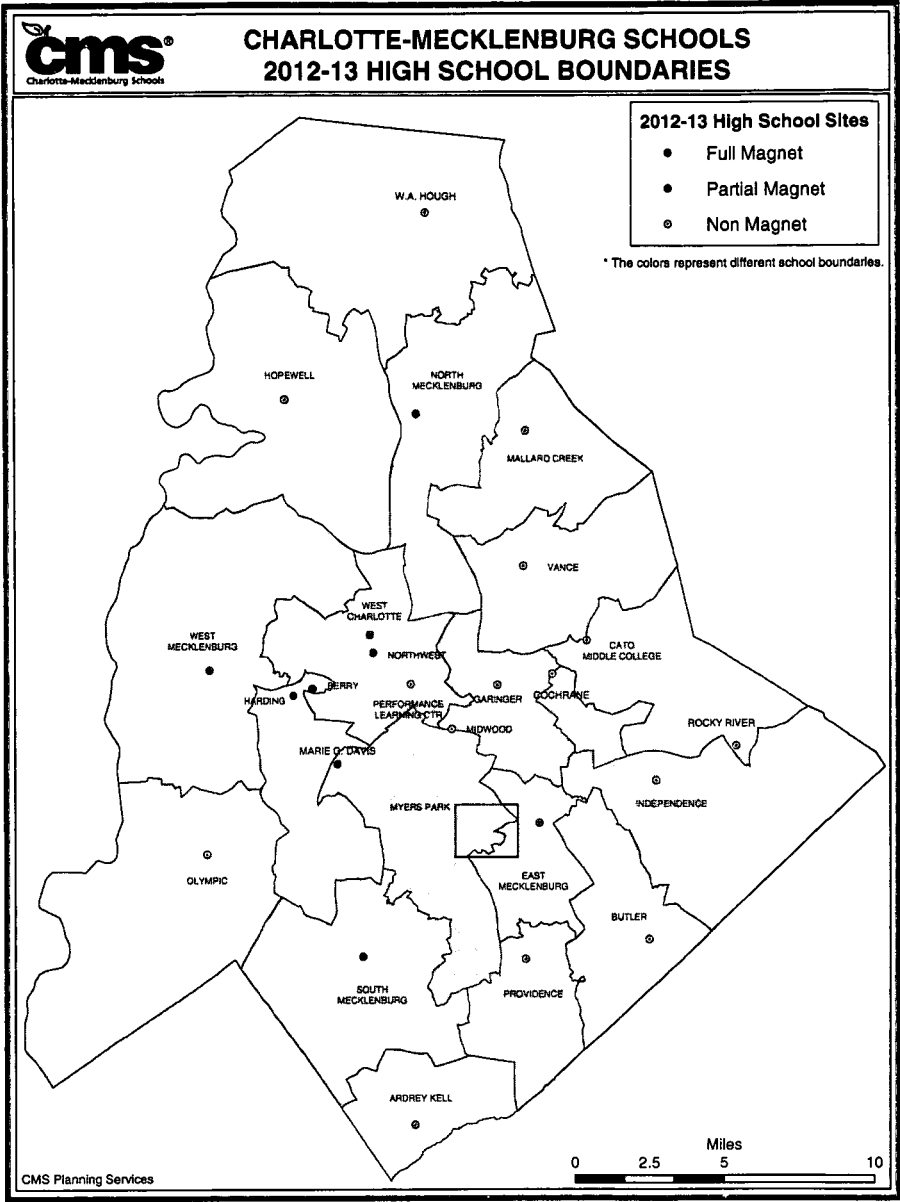
155. See Issue *supra* Part III.

156. See Issue *supra* Part III. Perceived quality may be more persuasive than actual quality, especially considering the difference between Atholton and River Hill.

157. See Issue *supra* Part III.

Appendix:

Map 1: Charlotte-Mecklenburg School District, High Schools



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Map 2: Howard County School District, High Schools

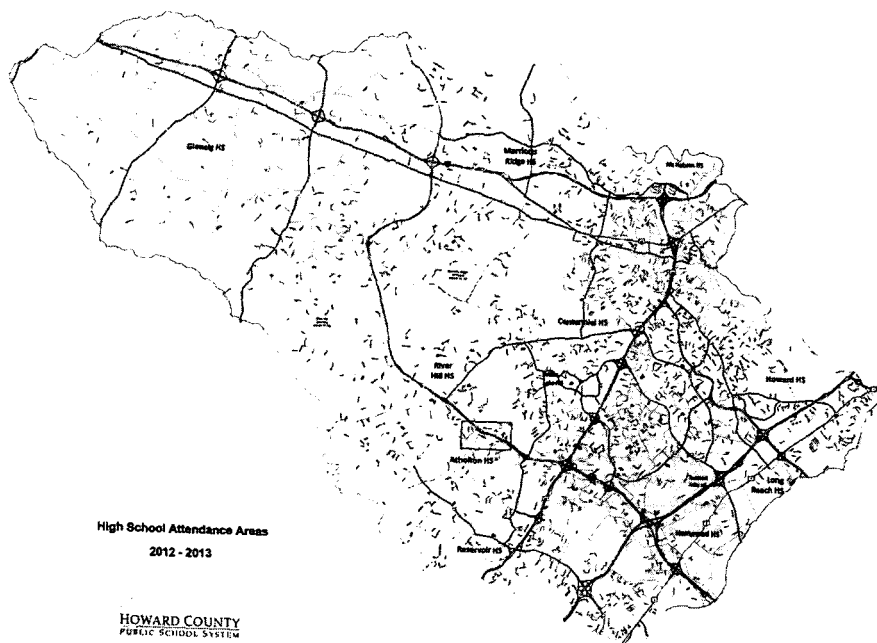


Table 1: Racial Composition of CMS High Schools (in Percentages)

High School	Total Student Population	African-American	Asian	Hispanic	Caucasian
Ardrey Kell	2393	14%	12%	7%	65%
Cato Middle College	188	41%	7%	11%	40%
David W. Butler	2063	28%	5%	13%	50%
East Mecklenburg	1688	48%	6%	17%	24%
Garinger	1771	57%	7%	29%	5%
Harding	1769	73%	3%	19%	4%
Hawthorne (Midwood)	282	82%	1%	12%	3%
Hopewell	1719	49%	3%	10%	35%
Independence	2026	34%	6%	19%	39%
Mallard Creek	2153	61%	4%	8%	24%
Myers Park	2766	26%	6%	8%	58%
North Mecklenburg	1589	58%	3%	12%	23%
Olympic Biotech*	414	52%	10%	17%	16%
Olympic Global*	408	46%	6%	34%	10%
Olympic Int'l Business*	413	65%	2%	20%	9%
Olympic Math/Science*	461	30%	4%	17%	44%
Olympic Renaissance*	455	33%	5%	23%	36%
Performance Learning Ctr	119	33%	3%	4%	56%
Philip O. Berry	1455	76%	3%	12%	5%
Providence	2010	9%	8%	5%	75%
Rocky River	1707	62%	4%	18%	13%
South Mecklenburg	2373	28%	4%	22%	44%
West Charlotte	1738	85%	6%	5%	2%
West Mecklenburg	1824	63%	7%	16%	10%
William A. Hough	1975	11%	2%	7%	78%
Zebulon B. Vance	1793	67%	3%	23%	4%

*The numbers for Olympic High School are a little disjointed due to a program instituted by the Coalition of Essential Schools and the Bill and Melinda Gates Foundation in 2005. See OLYMPIC COMMUNITY OF SCHOOLS, <http://www.maagcom.com/olympic/ocos.htm> (last visited Apr. 16, 2013) for more information on this design. Combining the above information, the information for the entire school is as follows: Olympic, Total Population: 2151, African-American: 45.2 %, Asian: 5.4 %, Hispanic: 22.2 %, and Caucasian: 23 %.

Table 2: Racial Composition of HCPSS High Schools (in Percentages)

High School	Total Student Population	African-American	Asian	Hispanic	Caucasian
Atholton High	1459	15%	16%	6%	58%
Centennial High	1472	7%	30%	4%	54%
Glenelg High	1232	5%	6%	3%	83%
Hammond High	1330	35%	8%	9%	41%
Howard High	1633	19%	9%	7%	57%
Long Reach High	1212	30%	12%	12%	40%
Marriott's Ridge High	1305	6%	21%	3%	67%
Mt. Hebron High	1476	13%	24%	5%	52%
Oakland Mills High	1155	38%	7%	14%	34%
Reservoir High	1522	26%	10%	11%	47%
River Hill High	1395	7%	23%	5%	61%
Wilde Lake High	1324	40%	7%	9%	36%

Table 3: Students on Free and Reduced Lunch at CMS High Schools

High School	Total Student Population	Total Percentage of Students Eligible for Free or Reduced Lunch
Ardrey Kell	2393	14
Cato Middle College	188	51
David W. Butler	2063	24
East Mecklenburg	1688	56
Garinger	1771	82
Harding	1769	60
Hawthorne (Midwood)	282	85
Hopewell	1719	36
Independence	2026	60
Mallard Creek	2153	38
Myers Park	2766	29
North Mecklenburg	1589	23
Olympic	2151	50
Performance Learning Ctr	119	41
Philip O. Berry	1455	65
Providence	2010	10
Rocky River	1707	48
South Mecklenburg	2373	32
West Charlotte	1738	76
West Mecklenburg	1824	74
William A. Hough	1975	14
Zebulon B. Vance	1793	64

Table 4: Overall Percentage of Students on Free and Reduced Lunch in CMS

In FY 2008-2009	In FY 2009-2010	In FY 2010-2011
48.8%	53.3%	51.7%

Table 5: Students on Free and Reduced Lunch at HCPSS High Schools

High School	Total Student Population	Total Percentage of Students Eligible for Free or Reduced Lunch
Atholton	1459	5
Centennial	1472	5
Glenelg	1232	1
Hammond	1330	23
Howard	1633	8
Long Reach	1212	22
Marriott's Ridge	1305	5
Mt. Hebron	1476	10
Oakland Mills	1155	28
Reservoir	1522	17
River Hill	1395	5
Wilde Lake	1324	24

Table 6: Overall Percentage of Students on Free and Reduced Lunch in HCPSS

In FY 2008-2009	In FY 2009-2010	In FY 2010-2011
12.0%	13.0%	16.0%