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April 23, 2020

Trustees of Folsom-Cordova
Unified School District
1965 Birkmont Drive
Rancho Cordova, CA 95742-6407
c/o Paul Gant, Esq.
via electronic mail

Re: Input on Communities of Interest and Public Engagement

Dear Trustees:

I want to congratulate the Board on its decision to move f23,orward. As I attempted to communicate to your attorney, if this commitment is sincere, it is not necessary to cure or desist from Brown Act violations. It is more important than ever that the Board represent all of its communities, because there will be many difficult decisions next year. I am confident that it can be done, but if that proves wrong, my clients are prepared to discuss whatever resolution or mitigation is necessary.

It is the District's responsibility to engage the community and to ensure that it receives input from all of its communities. There is much the District can do to increase public engagement. The transition should prominently feature the time of its hearings on its home page, possibly with an alert flag to gain attention. You should appreciate that the District is on the eastern edge of a metropolitan area with minority organizations whose spokespeople may live outside its boundaries, but speak knowledgeably and authentically for their communities. You should reach out to places of worship with substantial numbers of Latino, African-American or Asian congregants. You should provide leaflets on the process at lunch distribution cites. Mt. Diablo did an excellent job of engaging its Latino community, and may be able to make additional suggestions.

My clients expected 2020 to be a convenient year for the Board to complete this transition. President Clark is concluding his term and may decide to run for reelection. He lives in a part of Rancho Cordova in what will likely become part of the high-minority trustee area. He was a Latino candidate-of-choice four years ago. Sequencing that area for 2020 would satisfy the requirements of Section 10010(b). The Board can therefore consider the preferences of its members in scheduling the other trustee area to be elected in 2020. By completing the initial five-hearing process this year, you will

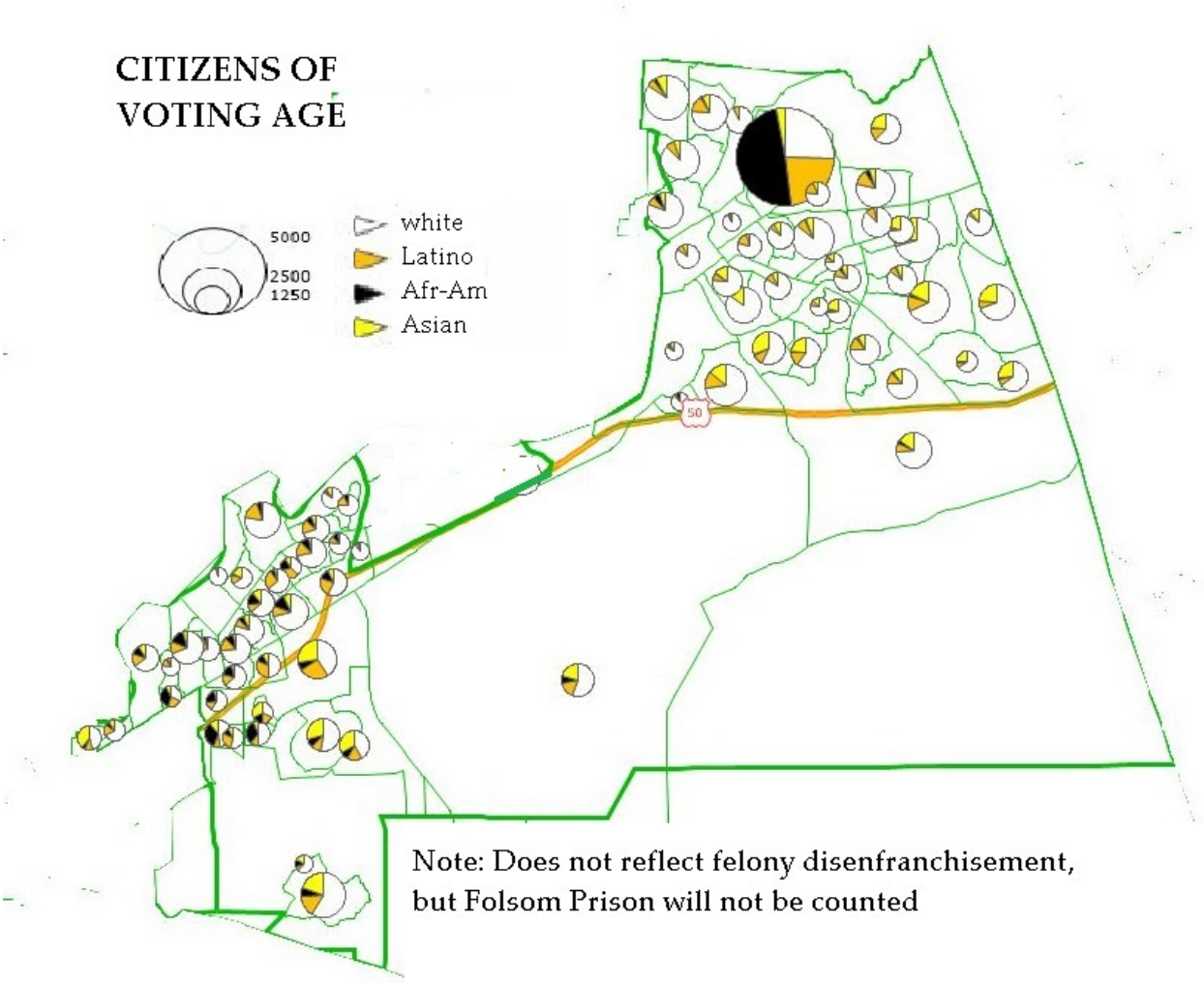
only need to hold one redistricting hearing before March 1, 2022. Because of the large number of entities redistricting, this is likely a substantial economy. You may ask Dr. Johnson, but I suspect that it will be even more difficult and expensive to retain a demographer for five hearings in 2021, especially now that the census data is being delayed until at least August 2021.[1] You will be able to correct any errors revealed by the new census data, although there are increasing concerns that the 2020 data may not be accurate.

ROLE OF RACE AND ETHNICITY

Unlike most of the cases that I have worked with Dr. Johnson, Folsom-Cordova cannot create a majority district for Latinos or any other single protected group. No protected group can elect its candidate of choice alone. However, the CVRA also promotes greater equality of influence for creating smaller electoral districts in which protected groups can elect a candidate in coalition or by attracting cross-over white Anglo voters who share their values and appreciation of their needs. In order to district through an equitable lens, you may wish to focus on creating trustee areas for trustee areas that have not been effectively represented in the past, due to economic or educational disadvantages. The needs of these communities are great, and many have disproportionately large numbers of school-age children. Districting ensures that they are represented in proportion to their population, which may be greater than their relative participation as voters or as speakers at school board meetings.

I want to anticipate the possibility that members of the public will be confused by the concept of "racially polarized voting." It simply means that Latinos and other minorities vote differently than the rest of the electorate. If this were not the case, the white majority would determine the outcome of every elective office and every ballot question, which no one wants. Districting does not eliminate racially polarized voting, but empower its. The purpose of the CVRA is to mitigate the dilution of minority preferences by at-large systems. Districting protects against their winner-take-all quality. It also enables candidates to compete in smaller constituencies, enabling candidates of all races who lack the personal resources of special interest backing to run across the entire district.

[1] https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html



In this context, my clients hope that the Board will consider race in the context of a broader consideration of socio-economic indicators that identify geographic communities with exceptional needs and impediments to participation. There are legacies of discrimination that cause race and Latino ethnicity to correlate with other measures of need and disenfranchisement, but not all Latinos or Asians suffer from these impediments. You may wish to consider a composite index that the state has prepared to identify block groups that will be hard for the census to count. See page 9. These communities may also be less visible to local government.

Dr. Johnson will provide demographic measures other than race once the maps are drawn. However, I believe it is useful to consider socio-economic indicators as part of the initial definition of communities of interest. The attached exhibits demonstrate some measures derived from the Census Bureau's American Community Survey, the

California Census Office, and the Public Utilities Commission. These may supplement the demographic information that the District has no doubt collected regarding the District's student and refugee populations.[2]

Collectively, the maps identify that Rancho Cordova has greater socio-economic need than Folsom. The smallest level for which the census reports these data is block group. Within Folsom and Rancho Cordova, they should inform the separation of trustee areas, in conjunction with neighborhoods (defined by police, social media, or planning authorities), major streets or physical features, and other common interests identified by the community.

IMPACT OF DISTRICTING ON BOARD DYNAMICS

It may also be useful to anticipate complaints that districting will lead to "balkanization," an argument often made by advocates of the status quo. 350 years of American history prove this wrong. When Alexander Hamilton designed the House of Representatives, he relied on more than 150 years of experience with single-member constituencies. Local elected government was invented in the American colonies. When the 2300 Germans arrived on Governor's Island in 1680, they automatically had a member on the New York City Council. For more than three centuries, representative democracy has enabled the United States to integrate immigrant communities and to enjoy a stable democracy. Few doubt the loyalty of their congressman to the interests of the United States, but most – even those who voted for the losing candidate – value having a representative that can inform Congress about the special needs of their district, and reflect its particular values. Districting encourages voters to elect officials who are good negotiators, attentive to their needs and mindful of their priorities. Winner-take-all elections systematically lead to government that is not fully informed and have limited incentives to address the needs of communities that are not critical to maintaining the at-large electoral majority.

At-large elections were an anomaly until the early twentieth century, when they were promoted nationally by politicians such as Hiram Johnson, Governor of and then Senator from California. They were intended to exclude minorities (immigrant and first-generation Europeans) and entrenched the dominance of his party in California local government through five decades of demographic change.

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[2] Inmates at Folsom Prison are not counted. They retain their prior domicile (Elections Code, Section 2025), even if they are not eligible to vote. The Legislature will retabulate the 2020 census (for the first time) to assign citizen inmates to the census blocks where they resided prior to their incarceration.

Districting is particularly valuable given the history of this district. Folsom differs from Rancho Cordova, and is also geographically separated. In 2010, it had 58% percent of the total population, so it will likely elect three members, even after the 2021 redistricting. But in the past, the Board has often had all five members living in Folsom. There was also a perception that members, such as Roger Benton, who advocated for Rancho Cordova, were purged by Folsom voters. The election of trustees such as President Clark turned the page on an era of division, but districting protects geographic balance on the Board permanently.

THE USE OF CENSUS DATA AND POPULATION PROJECTIONS

The public may also be concerned about the age of the census data. The size of each district is determined by data collected in 2010. But the decennial census collects no information about citizenship, economic status, English proficiency, or other characteristics other than race and household relationships. Almost all the data critical to the design of the districts comes from five-year rolling averages in the American Community Survey. The most recent was released on January 31, 2020. There is a significant lag in these data, but they will not be more current after the census.

Folsom-Cordova does not appear to have experienced unbalanced population growth since 2010. School districts are prohibited from using census data that have not been validated by the Department of Finance, which in some jurisdictions disputes the total population. That is not the case in either Folsom or Rancho Cordova.

Dr. Johnson offers jurisdictions the option of considering future growth, at least to justify variances up to 10 percent. This practice is disfavored by the courts unless there is a clear demonstration that it is uniformly applied.[3] These adjustments tend to favor new construction over less visible population change in established communities. Economic forecasts are extremely uncertain. Projected developments are not always built within the intended timeframe. The Rio de Oro specific plan has been in process

[3] The use of population projections requires thorough documentation and consistent application. Both the district court and the Ninth Circuit distinguished Supreme Court cases implying such a presumption as relating to attempts to build in consideration of futuretrends. In the case of predictions, the legislative body must "thoroughly document" its methodology and "apply [it] throughout …. in a consistent manner." *Id., distinguishing* McNeil v. Springfield Park District, 851 F.2d 937, 947 (7th Cir.1988), cert. denied, 490 U.S. 1031 (1989); Graves v. Barnes, 446 F. Supp. 560, 568 (W.D.Texas1977), aff'd sub nom. Briscoe v. Escalante, 435 U.S. 901 (1978). Kirkpatrick v. Preisler, 394 U.S. 526, 535 (1969) adjustments based on future population as suspect because they are subject to subterfuge.

for over fifteen years, has not yet been finalized, and would be implemented over 30 years.

ROLE OF DEFINING COMMUNITIES OF INTEREST

As previously noted, Dr. Johnson and I disagree about the role of communities of interest once they are identified. The California Constitution, Article XXI, Section 2(d)(4), as it applies to state offices, provides that the "geographical integrity [of a] community of interest shall be respected in a manner that minimizes its division to the extent possible without violating" contiguity, equality of population, or the federal Voting Rights Act. (The Voting Rights Act prohibits "packing" a supermajority of a protected group into a small number of districts, which does not apply here.) It is a fundamental principle of districting that communities of interest are not deliberately split.

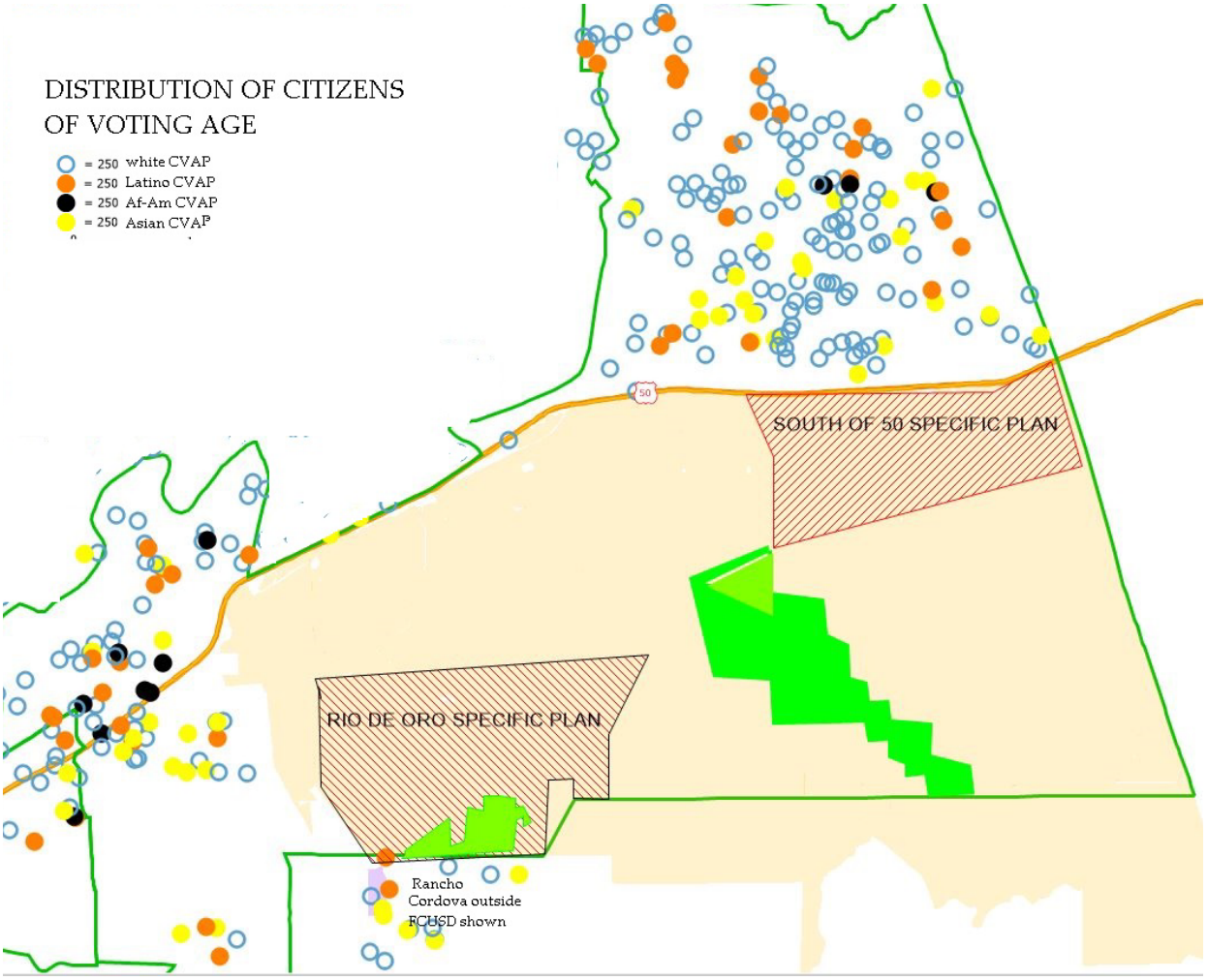
Dr. Johnson's presentation suggested that attendance districts may be split, ostensibly so that a school or its voters may have the "benefit" of multiple representatives. In other jurisdictions, he has argued that a source of local pride (such as a waterfront) or concern (such as a redevelopment zone) was so important that most or all of the elected officials should retain a piece of it after districting. This is antithetical to the basis purposes of the CVRA and districting generally, which is to distinguish interests so that they have dedicated representatives, not establishing five microcosms of the at-large electorate. The effect of such "split" communities of interest is almost invariably to allocate just enough voters from the wealthy high-turnout areas to maintain control of multiple districts.[4]

ASSIGNING UNINCORPORATED AREAS

A member of the public has already observed that the specific plan South of Route 50 is distinct from the traditional city limits of Folsom. More generally, it is important to recognize that the large area between Folsom and the developed area of Rancho Cordova (269 census blocks shaded in beige) had a 2010 population of only 62 people. Some of this area is permanent open space (green). A small portion (Somerset

[4] For example, at-large elections allowed wealthy, high-turnout El Cerrito to control West Contra Costa USD for most of the 53 years after its merger with the Richmond school district (despite having only ten percent of the population). WCCUSD attempted to adopt Dr. Johnson's map, which deliberately split El Cerrito High's traditional feeder zone into three trustee areas. This could have perpetuated a white Anglo majority, which is why my clients opposed its adoption by the County Committee. This was the first time any County Committee in California had ever rejected a trustee area map proposed by the district.

Ranch) is already being developed. A former missile site within Rancho Cordova is being developed as "Rio de Oro."



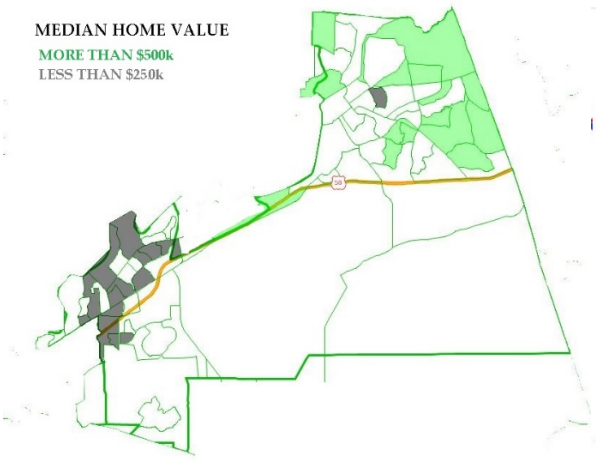
It may be appropriate to allocate the lightly inhabited areas after drawing the most compact and distinct trustee areas within Folsom and Rancho Cordova. Given the current state of development, the 2020 census may not reveal significantly increased population. In principle, these areas should probably attach to the adjoining areas with the most similar housing stock and demographics, consistent with the principle of community of interest.

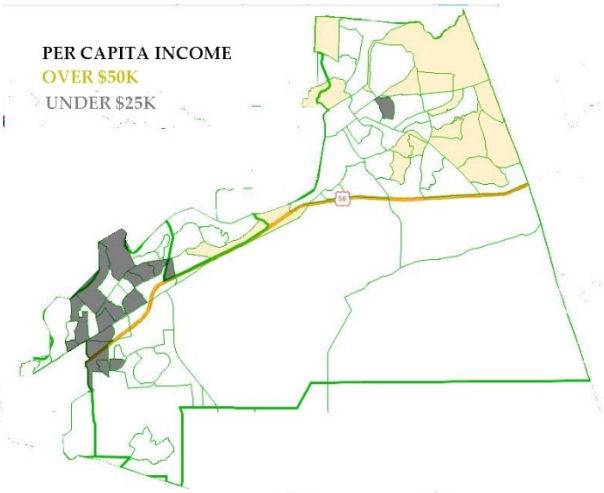
Sincerely,

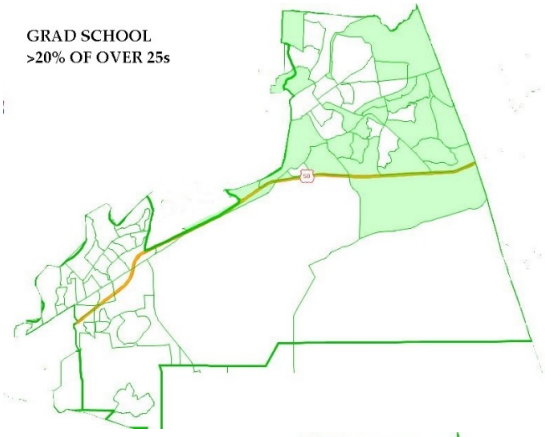
Scott Rafferty

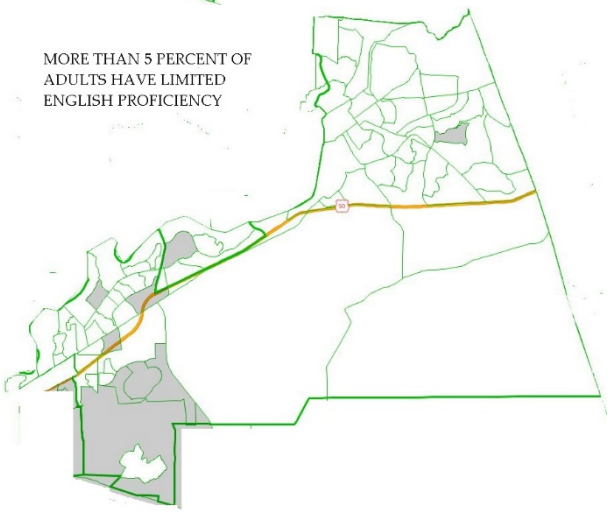
Scott J. Rafferty

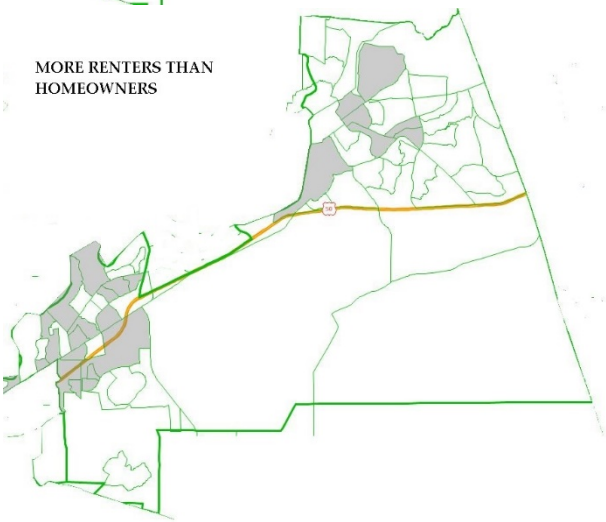
DEMOGRAPHIC INDICATORS OF SOCIAL NEED AND IMPEDIMENTS TO CIVIC PARTICIPATION

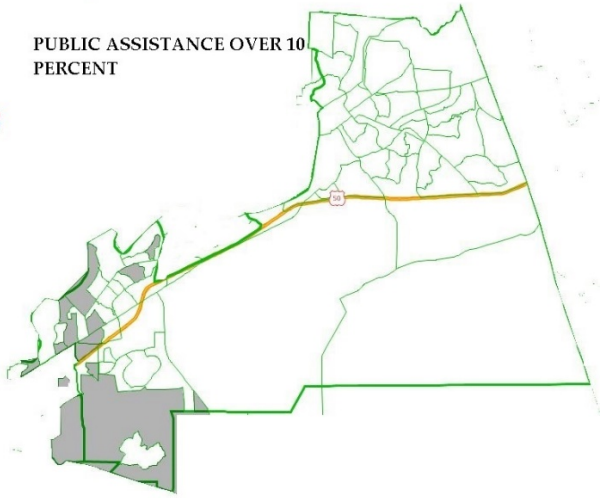




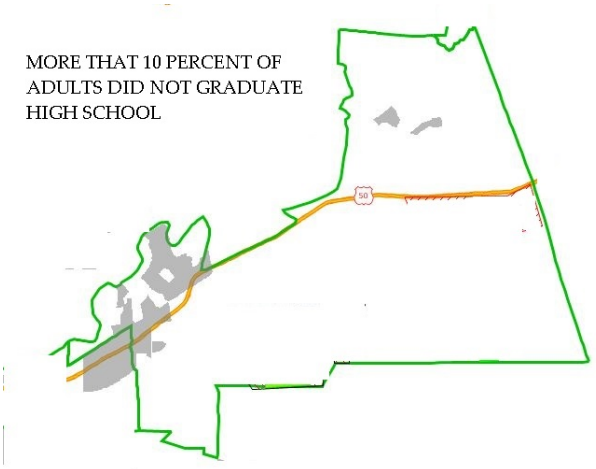






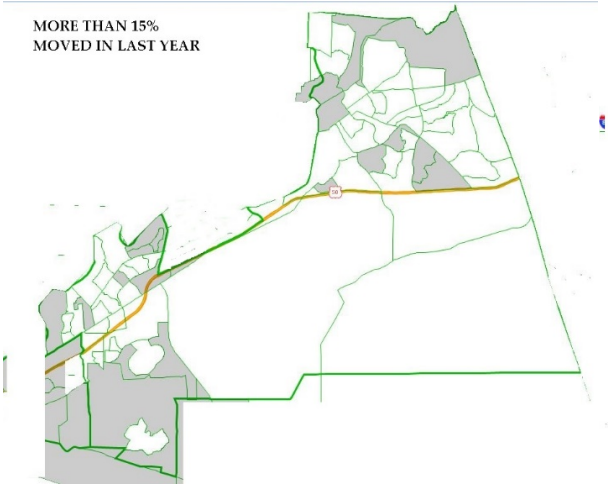


MORE THAT 10 PERCENT OF ADULTS DID NOT GRADUATE HIGH SCHOOL

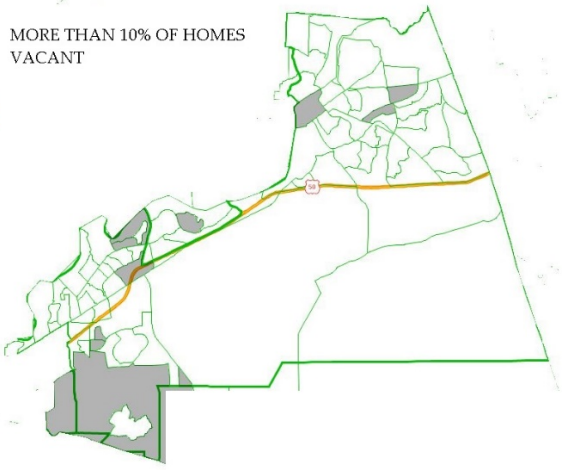
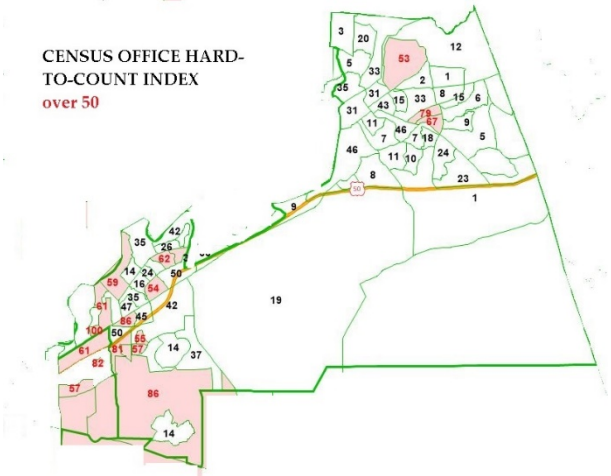


UNEMPLOYMENT OVER 10 PERCENT
(pre pandemic)

MORE THAN 15% MOVED IN LAST YEAR



MORE THAN 10% OF HOMES VACANT



CENSUS OFFICE HARD-TO-COUNT INDEX
over 50