

Rural Application of Form Based Code in Michigan

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Abstract

This was an applied research project to determine the applicability of using form based code, or form based zoning in a rural setting in Michigan. The research involved working with a Michigan Township which had rural residential and working lands zoning districts and which had staff and planning commission officials familiar with form based code. The project involved using a small Charrette to define community vision, define form elements to be used, as material to supplement the existing community Master Plan; Conducting a synoptic survey to further define community and community form; and then preparing drafts of a form based zoning for each zoning district and drafts of the administrative sections of zoning. The finding for this project is that advantages of form based code in Michigan for rural (transects T1 and T2) were nil, or nonexistent. So the question becomes why spend more money than a conventional zoning would cost for no apparent gain? The study township concurred and expressed no interest in adopting form based code/zoning.

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Report

The project

This was an applied research project to determine the applicability of using form based code, or form based zoning in a rural setting in Michigan. It was funded by the Michigan Sea Grant Coastal Community Development funds. Funding paid for time, materials, travel, for Michigan State University Extension Educators, and a retired Educator, who had experience in form based zoning:

- Kurt H. Schindler, AICP, Senior Educator, with a specialization in land use (planning and zoning)
- Glenn Pape, Educator, with a specialization in land use (planning and zoning)
- Rod Cortright, County Extension Director Emeritus, with a specialization in land use (planning and zoning)
- Mark Breederland, Educator, with a specialization in costal communities development

Schindler and Cortright had prepared one of the first form based zoning ordinances in Michigan. That applied research was done with the Village of Suttons Bay, and generated training materials, programs in form based zoning in Michigan. A major part of the project was to demonstrate it was a zoning style that can be done under Michigan's zoning statutes¹ and would survive detailed review by an attorney experienced in municipal (planning and zoning) law.

When Suttons Bay Village adopted its form based zoning, the formal procedures and methodology for form based codes had not been developed yet. It pre-dated the formation of the Form Based Code Institute,² its training programs, statements of best practices, and so on.³ Since then both Schindler and Pape have completed the Form Based Code Institute's three-course training in form based code/zoning and have completed the National Charrette Institute⁴ Charrette Management and Facilitation Training.

Form based code/zoning

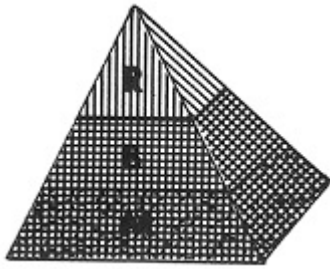
There are different styles of zoning in use in Michigan. The zoning ordinance, map and text, can take on several different types or styles. Zoning ordinances can be categorized as traditional zoning, conventional zoning, performance-based zoning, form-based zoning or a mix of the types.

¹Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*

²<http://formbasedcodes.org/>






³ While the village among the first in Michigan (a good thing) it also means much has been learned since its adoption and improvements to the ordinance would be expected today (a disadvantage to being a leading adopter).

⁴<http://www.charretteinstitute.org/>

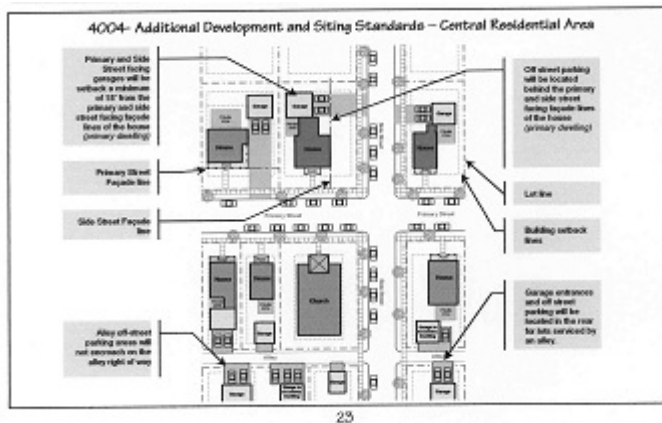


Traditional zoning is also known as pyramid or Euclid zoning, named for the U.S. Supreme Court case Village of Euclid (Ohio) v. Ambler Realty Company where zoning was upheld as a valid government police power. In traditional zoning, each zoning district builds on the previous one. For example, an R-1 Residential may allow dwellings and duplexes. The R-2 Residential allows everything in R-1 plus apartment buildings. The C-1 Commercial district allows everything in R-2 plus retail and service establishments, and so on. One might illustrate this with a pyramid, with R-1 at the top, and under it, slightly larger, is R-2, and then C-1 forming the wide base. Largely fallen out of use, this type of zoning is not seen much anymore.

Conventional zoning, by far the most common type of zoning found in Michigan, divides communities into separate exclusive zoning districts. A major characteristic is the segregation of land uses into separate areas. This type of zoning results in neighborhoods without a mix of commercial or other land uses, and may result in neighborhoods with all dwellings built for a single income bracket. More recently, this type of zoning has been modified to allow a mix of uses (especially in commercial areas) and to include some form-based zoning elements.

 Commercial	 Big Manistee River Corridor
 Highway Commercial	 Forest Production
 Developed Residential	 Natural Area
 Residential	 Wetland Conservation
 Rural Residential	

Performance-based zoning focuses more on the impact of a land use rather than the actual use. For example, a residential district may allow any type of land use when the external impact of that use is basically the same as the typical use for that district. Therefore, if a person wants to open a corner store, that store must meet the zoning ordinance set of standards. If the store meets the standards, indicating the store's impacts are the same as those of a 10-unit apartment building (traffic generated, amount of sewage, noise or other impacts), then the store will be permitted. The formula and system for measuring impacts can be complex but effective if done right.



Form-based zoning focuses more on the form of the activity rather than the land use. This type of zoning emphasizes the form of the building and its relation to the public realm (street, park, etc.) It allows for broad and general land use. However, the outline of the built-form of buildings, parks and streets has priority. This type of zoning plan includes many drawings and illustrations, relying on illustrating the regulations with minor use of annotations. The Form-Based Codes Institute advocates this newest

type of zoning (<http://www.formbasedcodes.org/>). Form-based zoning is particularly effective in urban settings (but likely can also be applied in a rural setting) and for adoptive re-use of buildings, faster approval processes, placemaking, and so on. Because it is new and from a national initiative, the names and parts of the code do not align with the terminology found in the MZEA. A rough equivalency of those terms follows:

- Form-Based Code (FBC) (national) = Form-based zoning (Michigan MZEA equivalent)
- Illustrative Plan = map in the master plan
- Regulating Plan = zoning map (but drawn with different features and emphasis)
- Mandatory FBC = the zoning district, written as a FBC, must be followed
- Optional or Parallel Code = a Planned Unit Development handled as an administrative decision (special use) or handled as a special use permit. The applicant has a choice to follow conventional zoning or the FBC. The FBC might be the permitted use option while the conventional zoning would be the special use/PUD option, or visa-versa.
- Floating zone = (no equivalent, cannot be done in Michigan). Might be handled as a zoning amendment PUD

Form-based zoning is still new for Michigan. It has been put into practice in about two dozen communities in the state.

Finally, a zoning ordinance may contain a mix of the above zoning types. For example, in a conventional zoning ordinance, one zoning district might be prepared in the form-based approach. Or a conventional zoning ordinance may be retrofitted to have form-based elements, but still written in the conventional style. Another example would be a combination of performance-based zoning with conventional or traditional zoning.

In urban settings the following have proven to be clear advantages of form based zoning:

- Encourage public participation: allows citizens to see what will happen –higher comfort level
- Encourage independent development by property owners
- Provides for diversity of architecture, materials, uses, and ownership
- It is a regulatory tool for creating a specific place
 - Vital Downtown: Builds upon the positive qualities already there
 - Real Neighborhoods: Identifiable, walkable
 - Keeps unique community character
 - Keeps natural features and cultural heritage
- If done well, communities with Form Based Code found they have far fewer hearings, long review and approval processes, and contested cases.⁵
- With fewer special uses and ZBA cases, overall approval is faster, as more cases are handled

⁵In the experience of Suttons Bay Village's form based code/zoning, they had two Zoning Board of Appeals cases in six years. They went from 10 special uses to zero/1 special use cases during 2008-2012 (and had six such cases in the six year prior)

as zoning permits with site plan approvals.⁶

Suttons Bay Township

This project took place with a partnership and cooperation of Suttons Bay Township. After Suttons Bay Village adopted its form based zoning ordinance the village and township created a Joint Planning Commission pursuant to Michigan's Joint Municipal Planning Act.⁷ The Joint Planning Commission completed a Joint Master Plan.⁸ That plan was formally adopted by both the village and township. The Master Plan included general statements supporting a common zoning ordinance for both the township and village and use of form based style of zoning.

Since then the village withdrew from the joint planning commission, and the joint planning commission ceased to meet. But the joint Master Plan continues to be the master plan for the township.

Thus it was felt Suttons Bay Township had the staff and planning commission officials familiar with form based code/zoning. Also the township's attorney was experienced in municipal (planning and zoning) law. Local staff involved with this project were:

- Kathy Egan (a.k.a. Kathy Fintch), Suttons Bay Land Use Planner⁹ (former member of the Suttons Bay Village Planning Commission, formerly conducting planning services to the village under contract with the township)
- Steve Patmore, Zoning Administrator (former zoning administrator for the village under contract with the township)
- Richard Figura, *Esq.*, RICHARD J. FIGURA, PC¹⁰ (of counsel to SIMEN, FIGURA AND PARKER, P.L.C.¹¹)

The object of the study was to explore the application of form based code/zoning to rural areas in Michigan. After Suttons Bay Village and about two dozen other urban areas adopting form based code considerable success and advantages were seen (page 5). Would these same advantages also exist for rural settings?

⁶ Approval is faster if done correctly. If a form based code does not generalize list of uses – do not see reduction in ZBA cases. If a form based code does not reduce the number of special uses – do not see reduction in Special Use cases.

⁷ MCL 125.131 *et seq.*

⁸ Seyfarth, Heather; *Suttons Bay Community Joint Master Plan; Developed by the Suttons Bay Community; Suttons Bay Community Joint Planning Commission; Land Information Access Association (LIAA) Partnerships for Change program; August 2011.*

⁹ <http://www.leelanau.cc/sbtwpzoning.asp>

¹⁰ <http://www.figuralaw.com/>

¹¹ <http://sfplaw.com/>

The project was to follow the procedures and protocol for development of a form based code as recommended by the Form Based Code Institute:

1. Conducting a synoptic survey to further define community and community form; and
2. Conducting a small Charrette to define community vision, define form elements to be used, as material to supplement the existing Master Plan;
3. Adopting supplement(s) to the existing Master Plan;
4. Preparing drafts of a form based zoning for each zoning district and drafts of the administrative sections of zoning;
5. Legal review of the completed draft;
6. Adoption of zoning, or zoning amendments.

At the end of the project only items numbered 1, 2, part of 4, and part of 5 were done.

Community Character/Form

During spring and early summer of 2013 Cortright, Schindler, and Egan conducting a synoptic survey to further define community and community form. This was done by driving most roads in the township, air photo interpretation, land ownership patterns, review of existing (township and county) ordinances effective in the township. Also Cortright, Egan and Jeff Schwaiger, of SCHWAIGER DESIGN¹² flew over many parts of the township. From this work and the Charrette work on the form based code/zoning started.

Charrette and Master Plan

Analysis of the *Suttons Bay Community Joint Master Plan; Developed by the Suttons Bay Community* was done by Pape. He concluded that plan did not contain enough detail of necessary elements in a Master Plan to satisfy the best practices protocol and procedure established by the Form Based Code Institute. The plan is lacking a few things but could fill those in with the Charrette.¹³ Lacking were visioning and illustrative plan elements for the township. There is a small amount of visioning (page 37+ of the Master Plan) but it does not go far enough. The master plan does specifically reference Form Based Code at Objective 6.2, strategy iii (p. 76) also discussed on page 86, and 35.

In more detail, the joint Master Plan did not include:

- An illustrative plan for a form based code so the new ordinance is based on a zoning plan (MCL 125.3203(1)).
- Proposed schedule of regulations -- not found in the Joint Plan: building height, lot area, bulk, setbacks.
- Future land use map – page 56 of the Joint Plan (But it is not an illustrative plan for a form based code/zoning)
- Explanation of how land use categories in the illustrative plan map (future land use map)

¹²<http://www.jeffreyschwaigerdesign.com/>

¹³Email: sent by Pape to Schindler on Wednesday November 28, 2012, 8:27pm RE: Master Plan.

relate to districts on the regulating plan map (zoning map) – figure 4.2 on page 59 of the Joint Plan. (But it is written for the current zoning, and does not present the info for a re-write of the township's zoning into a form based code/zoning.)

- Proposed zoning map/regulating plan map – on page 60 of the Joint Plan. (But it shows current zoning, not proposed zoning map/regulating plan for a form based code/zoning.)
- Description of each zoning district (general purpose, class of uses in, general locations of) – page 58, and intermingled on pages 37-42, of the Joint Plan is written for the current zoning, and does not present the info for a re-write of the township's zoning into a form based code.
- Identification of sending and receiving zones for transfer of development rights (TDR)¹⁴ or purchase of development rights (PDR) as required by state statute.¹⁵

Other issues, or shortcomings with the joint master plan:

- Standards or criteria to be used to consider rezonings – side bar on page 58 of the Joint Plan (But maybe could be beefed up a bit)
- Discussions to support good codes – that goes beyond having an illustrative plan and regulating plan, such as Criterion Planning to integrate sectors and transects into a product that allows communities that have both urban and rural areas for the future land use map. The plan needs to detail where new community types should go and what pedestrian sheds should be completed.
- (As a side note, not related to form based code: the Joint Plan does not include treatment of Compete Streets (public transit facilities), as now required by statute¹⁶)
- (As an aside note: Joint Plan's section on "related plans" did not include the Andrews Study which is what village's Form Based Code relied upon. With that no longer listed, does that mean there is no longer a plan for the Village Zoning form based ordinance to be based on?)

Pape also pointed out "a Smart Code™ could be prepared relatively inexpensively. Upon review of several different types of form based code/zoning the township, according to Egan, did not want to use the Smart Code™ template for their firm based code.

So the project involved using a small Charrette¹⁷ to define community vision, define form

¹⁴. In Michigan TDR is likely not allowed (no enabling legislation to do so) or is very limited as a side product of open space zoning (MCL 125.3506).

¹⁵MCL 125.3507 to 125.3509.

¹⁶MCL 125.3833.

¹⁷The Charrette team:

Kathy Egan, Suttons Bay Township Planner
Rod Cortright, Emeritus MSU Extension
Sarah Lucas, AICP, NWMCOG
Barbara Nelson-Jameson, Suttons Bay Planning Commission
Glenn Pape, MSU Extension
Kurt H. Schindler, AICP, MSU Extension

- Building costs, costs of septic system installation make new homes unaffordable to many households
- Lack of affordable housing prevents many families from moving to the Township; and many families are moving out of the Township or County (Participants of the Charette reinforced those objectives, stressing the shortage of affordable housing in the township and the impacts of those shortages on families, the schools, and the community overall.)
- The township have many subdivisions that are mostly or entirely undeveloped.
- BUT...It's difficult, cost prohibitive for many households/families/individuals to buy a parcel and build new.
- Many viewshed lots in empty subdivisions are being sold to: seasonal residents, retirees – Not families, who can't afford to build a new home/septic

Ideas which came out of the Charrette to incorporate into the Master Plan and form based zoning were:

- Higher-density housing
- Smaller housing
- Housing close to Village sewer & water, schools, & parks. (The idea is smaller housing on small parcels close to the village [and on the village sewer system] will equal lower construction costs as well as convenience of living close to town.)
- Affordable housing – stressed the need for higher density homes, and a variety of housing types, that are located close to the Village.
- Locating a variety of housing types near Village.
- Revisit requirements for undeveloped¹⁸ subdivisions
- Rezone to allow higher density and diverse housing types
- Create smaller, less expensive lots and less-expensive homes
- Rezone for higher density around the Village
- New development in Neighborhood Residential should connect with and reflect traditional Village character
- Allow and encourage multiple housing types in Neighborhood Residential District: traditional single family homes, small-lot single family homes, townhomes, apartments. (Neighborhood Residential Zones could permit a variety of housing types that meet the needs of all residents – young families, small households, and seniors. Townhomes and apartments could be regulated through form-based code to ensure they are consistent



¹⁸Undeveloped subdivisions have been nicknamed zombie subdivisions.

with surrounding community character, and/or have a traditional “single family” design character.)

Much discussion at the Charrette focused on re-zoning undeveloped subdivisions to an “Empty Subdivision Overlay District.” The overlay would provide CHOICES for property owners above and beyond the underlying zoning. (To address the issues specific to largely undeveloped subdivisions, a Empty Subdivision Overlay District could be created. An overlay district adds regulations to certain areas, that apply in addition to an underlying zoning district. In this case, the Empty Subdivision Overlay District would add options for property owners in empty subdivisions. If those subdivisions are abandoned, the zoning would revert to the “underlying” zoning – which could be working lands or rural districts.)

The concepts of the choices envisioned were:

Choice 1 : Leave as-is – owners can develop as planned and approved. An overlay district could provide a few different options for the Township’s undeveloped subdivisions. Under the first, the property owner(s) could proceed with the development as approved. There would be no change to the master deed, and lots could be developed as currently permitted.

Choice 2: Allow options for small-scale agriculture. Under this option, parcels could be consolidated to allow for small-scale agriculture and activities such as wineries.

Choice 3: Allow options for alternative housing types that are sensitive to surrounding character. Examples include townhomes, multi-family, etc. Under this option, with amendments to the subdivisions or condo master deed, additional housing types could be allowed. Regulations would ensure that character of new housing types were consistent with the character of the subdivision; and parcels could be redrawn to cluster these new housing types in a certain area.)



Choice 4: Abandon or revoke subdivision or site-condo and revert to underlying district Under this option if the property owners choose to abandon the subdivision/site-condo the property could revert to underlying zoning, in which case the property owner would be subject to the standard regulations for working lands or rural districts. This may involve use of PDR or TDR.

For Commercial:

For business district a new-urbanist type design (form based code) was not favored by those participating in the Charrette.

Finally, the Charrette produced this zoning plan map, or future land use map for the

township.

Zoning plan map

After the Charrette discussion turned to the form of amendment, supplement, or other form of amending the township's joint master plan. Township staff, Egan, did not want to amend or in any way change, modify, supplement the township's joint master plan. See email correspondence on this topic in Appendix A, page 19.) (See list of the joint master plan's shortcomings (page 7.)

There is more than one way to adopt the changes, or supplements to the existing plan:

- Adopt an amendment to the joint master plan.
- Adopt a sub-area plan (MCL 125.3835) for the “zoning plan” (separate document, maybe just the township adopts). It is “subarea” in that it is not a plan for the entire planning jurisdiction (village and township) but just the subarea that is the township. The process to adopt a subarea plan is much shorter than to amend a master plan.
- Adopt a supplement to the *Suttons Bay Community Joint Master Plan* that is just the “zoning plan”/“illustrative plan” part. The “supplement” would just apply to the township, and would be in addition to the Joint Master Plan, not amending or instead of it. This approach does not touch, or modify the joint master plan document.
- Prepare the content of whichever of the three points, above, are chosen, to develop consensus on specific content of the form based code/zoning.

	Working lands Agriculture, agritourism, & support activities Land historically suitable as working lands and open space		Shoreline residential Small lot shoreline residential Built up until lot residential on waterfront
	Rural Residential Rural small lots, agricultural and large parcel residential		Neighborhood residential Trail town neighborhood design residential Increased density mixed housing types
	Protected open space No development due to environmental concerns		Residential Neighborhood design residential Low density mixed housing types
	Civic Parks and government buildings		Overlay Subdivision Repair Overlay

Township staff, Egan, wanted to first discover if form-based code will work in a rural township. After that then if it wants to consider adopting a form-based code, including plan amendments. Part of the reason for this is that the joint master plan was barely two years old.

Second, Egan took the position in the process of writing the joint master plan the Joint Planning Commission



(JPC) spent much time on ensuring that a possible future township based form based code would be possible under the Plan. The JPC felt that the requirements were all accounted for. Further the master plan should be a generalized vision document, not a specific list of standards.

Egan also indicated the issues and solutions that were flushed out at the Charrette can be expanded upon within the goals, objectives, and strategies currently found in the *Suttons Bay Community Joint Master Plan* at a later date.

In hindsight when it became clear there was not a willingness to work on master plan revision until later in the process, this research project should have been terminated. At the time there was not a simple avenue to bring this issue to the township planning commission. Schindler did not desire to be confrontational on the issue at that time (September 2013).

Not moving directly to drafting changes to the master plan also hurt the effectiveness of the Charrette. Charrettes are used to generate inertia. To do this it requires participation of the stakeholders in the process and implementing the decisions from the charrette quickly. In this case that did not happen. If the right people are not participating in the charrette or the charrette is not empowered with a decision making framework momentum can easily be lost. Instead the project went into the much slower-paced job of drafting zoning text.

Drafts of form base zoning and administrative sections

From the synoptic work (page 7) and the Charrette (page 7) Cortright proceeded to prepare individual form based code/zoning draft zoning districts. Schindler prepared a draft of the administrative sections of the zoning ordinance.

In hindsight it became evident that strong coordination between the administrative sections and zoning district sections of the draft ordinance are needed. The work on zoning districts and administrative sections progressed simultaneous. It may be wise to do the administrative parts first (so form based code zoning districts are written to fit into an existing zoning structure, or the new administrative section is established beforehand). Another option would be to work on the form based zoning districts first, followed by administrative sections. Doing the administrative sections first is recommended. This is because when done in the village the administrative section was done first, and the zoning districts followed. This allowed categorize of land uses to be conceptualized and defined, and other administrative details to be resolved first.

When done simultaneously it was possible for work on the two paths to diverge with different authors perusing different directions. This was further exasperated by the lack of agreed-upon supplement to the master plan. This resulted in a lack of direction and consensus. Also the product produced did not entirely follow the *Suttons Bay Community Joint Master Plan; Developed by the Suttons Bay Community* or the results of the Charrette.

A large part of working on the form based code zoning districts was to “test” if what was

being prepared was acceptable to the Suttons Bay Township Planning Commission. This took a long time, and focused on preparation of one zoning district by Cortright – to be used as a template. Once the template was agreed upon that template was then used to prepare additional form based zoning districts for review by the planning commission.

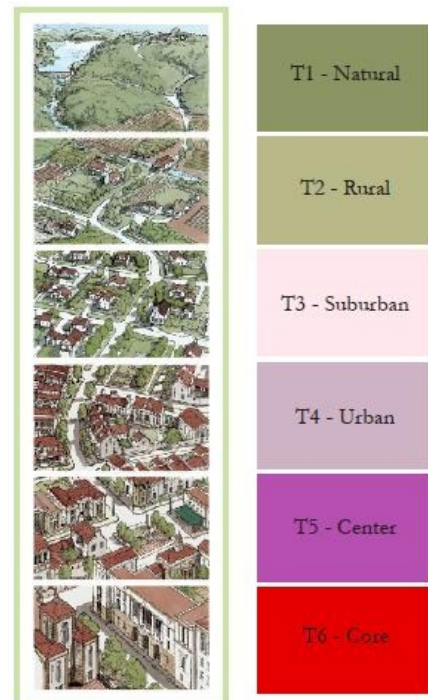
However there was significant push back by members of the planning commission against elements of the form based zoning district which were the basis, or foundation of what a form based code is. Form standards, building type standard, conservation design, were not uniformly supported by all members of the planning commission. One of the ways this push back was seen was from architects on the township planning commission, that decided they just do not like regulation of form and did not support it.

The result of a combination of lack of coordination between administrative and form base sections of the ordinance, lack of direction by at least having a draft of changes to the master plan, legal issues with applying form based code under Michigan Zoning Enabling Act and case law, and planning commission push back, was a draft ordinance which did not (1) follow the current joint master plan, (2) the concepts and outcome of the Charrette, and (3) was not a form based code.

On December 17, 2014 Figura, the township’s attorney, meet with Egan, Schindler, Cortright, and Patmore after his review of the zoning districts. His first observation was that what was prepared did not appear to be a form based code/zoning. He was correct.. Other than that observation the attorney did not find legal issues with the drafted zoning districts. However Figura’s review did not include the content of the draft administrative sections of the zoning ordinance. A number of outstanding questions for that part of the ordinance remain unanswered. See Appendix B, page 21.

A major difficulty in development of form based code in a rural setting is that the rural areas of Michigan often lack a definable “form” to start with. In counterpoint a form based code for a T2 transect area would be very similar to a use based code for locations identified for no growth. There may be a variety of development options such as cluster development or hamlet development. But, when developed, those areas become a T3 or T4 transects in character. Form in a T2 transect is regulated by setbacks primarily to provide buffers, safety, and protect viewsheds. Enclosure is also used to create this type of form. Rural is almost the opposite of built environment “enclosure” of public realm/streets for a suburban/urban place.

One of the key benefits of a form based code is its emphasis on human scale and walkability – T3 to T6 transects. (The open spacer areas of cluster or conservation land developments and traditional neighborhood developments are comprised of development resembling T1 and T2 patterns.) The



scale of these developments grows from crossroads with a few houses to hamlets containing 30 to 40 homes to developments which can accommodate 500 to 1,000 dwelling units with supported retail and services. Benefits of form based codes for walkability come to play with T3 and T4 transects' typical frontages and parcel sizes. The codes that work are those that really focused on keeping working lands in large parcels and limits non-farm uses in working lands (T2) areas. The more dense development are at nodes along transportation corridors that eventually grow to a hamlet or village.

One of the ways this is done is by use of TDR and PDR along with regulation. The regulation is paired with a market-function method of compensation for loss of being able to have dense development rights. Other areas of the United States form based codes in rural areas use a TDR approach and consider restricted growth areas under the sector plans as a sending zone. In Michigan TDR is likely not allowed (no enabling legislation to do so) or is very limited¹⁹ as a side product of open space zoning. If it could be done, it would create the market-based parcel conservation needed for working lands and transfers the density to those areas within the restricted growth zones for conservation land developments. Even more limiting for rural form based code effectiveness, but maybe possible is with use of PDR as is currently allowed in Michigan. Without such means it is politically difficult for preservation of working lands.

In the draft work for Suttons Bay Township a type of TDR was contemplated to deal with the undeveloped subdivisions. Those subdivisions would be left in low density zoning districts²⁰ but also included in an overlay zoning district which provided land owners the choices outlined on pages 11. This, combined with PDR would require the township master plan to clearly designate sending zones²¹ and receiving zones.²² The difficulty of doing this is another reason for not having form based codes in rural areas of townships or counties in Michigan.

In northern Michigan, and in particular in Suttons Bay Township, the local economy will not support more than one "hamlet" in a 36 square mile township. One of the existing problems in Suttons Bay Township are the undeveloped subdivisions already not being successful. A township sized unit of government is too small for the "hamlet" approach to work in most of Michigan. (However this may be a workable model for zoning at a county level.)

Form based codes are designed to create opportunities for growth in designated areas. In townships with an urban place such as a village usually the sustainable pattern is expansion of the urban areas into adjacent pedestrian sheds barring any physical barriers to the expansion. This is

¹⁹MCL 125.3506.

²⁰Undeveloped subdivisions: prime agriculture and working lands zoning districts.

²¹Sending zone: prime agriculture district and working lands district.

²²Receiving zones: area within the growth boundary around the Village of Suttons Bay, usually residential and commercial zoning districts.

the role of policy statements such as a future land use component in the master plan. If the plan has no timing elements contained in the policy statements directing growth within a township becomes difficult and the benefits of a form base code/zoning is diluted.

This is where planning for form base code/zoning becomes more important. A township master plan should also have policy discussions to support good codes – that goes beyond having an illustrative plan and regulating plan, such as Criterion Planning. Criterion Planning integrates sectors and transects into a product that allows communities that have both urban and rural areas to create an effective future land use map. Andrés Duany²³ advocates for language in the plan to automatically submit for intensifying the zoning every ten years. The plan needs to detail where new community types should go and what pedestrian sheds should be completed.

Form based code shifts emphasis in rural areas (T2) to regulation of setbacks primarily to provide buffers, safety and protect view sheds. This could also be termed “Conservation Design.” However when that becomes the **primary** approach it runs afoul of the Michigan legal principle that aesthetics cannot be the primary basis for government regulation. The government purpose for regulation has to be founded in public health, safety, and welfare, with aesthetics only as a secondary (and not a necessary) component of regulation.

The conservation design (even when written closer along the lines of conventional zoning) approach received push back from agricultural members of the Suttons Bay Township Planning Commission. Those representing agricultural interests wanted to protect their ability to sell all or part of the farm at the highest value, which did not include form based code/conservation design. Thus the age-old conflict between the working lands protection goals, and the farmer(s) who want farmland protection as long as it does not restrict his/her ability to sell the farm for non-farm uses does not go away. It became clear, in Suttons Bay Township this was not going to be a resolvable issue. This is not an incitement of rural form based code/zoning generally, but points out this debate and issue is just as much an issue regardless of the type zoning being pursued.

In Michigan mobile homes are often found in rural zoning districts. Michigan Supreme Court precedent²⁴ require that a mobile home be allowed in any zoning district under the same terms and regulations as other housing types (2x4 conventional, pole, log, straw bail, adobe, pre-manufactured, modular, etc.) – so long as the mobile home is not excluded from any of those zoning districts. This can be problematic for drafting “form” regulation. One can get correct form with any of the construction types. In an urban setting “form” is such that it results in mobile homes being allowed, but having certain shape, roof pitch, porches, etc. is likely to be poetically palatable. But in rural areas stricter form regulation of this type may be politically more difficult.²⁵

²³<http://www.dpz.com/About/People>

²⁴*Robinson Twp. vs. Knoll*; 410 Mich. 293, 302 N.W.2d 146 (Mich. 1981).

²⁵This issue had not yet become a point of discussion in Suttons Bay Township.

Finally, the cost of doing the work for this project (billable hours and expenses²⁶ for the Charrette, draft ordinance development) did not show any appreciable savings over development of conventional zoning (public participation, master plan update draft ordinance development) in a rural setting. Had the work on the master plan update also been done, the costs would have been even higher.

Conclusion

The finding for this project is that advantages of form based code in Michigan for rural (T1, T2 transects) were nil, or nonexistent. So the question becomes why spend more money than a conventional zoning would cost for no apparent gain? Suttons Bay Township concurred and expressed no interest in adopting form based code/zoning. See Appendix C, page 24.

The issues concerning farmer's desire to be able to sell the farm, architects not wanting regulation of form, the order in which the work on the draft form based code was done (districts or administration), and not at least drafting master plan changes after the Charette, do not address the initial question as to if form based code works or is worthwhile in a rural setting. Those issues complicate the analysis, but do not contribute to the conclusion.

Rural form (in the context of buildings) is lacking, so there were limited useful results from a synoptic survey. Rural form (in the context of landscape, etc.) was deemed to be aesthetics which cannot be a primary basis for regulation of land. Form based code/zoning in rural areas which makes aesthetics a primary consideration. Conventional zoning does not.

For buildings, how do you define a "form" when (to pick one example) form for rural housing is all over the map: classic farm house, modern ranch, suburban mansion, cottage, module, mobile home, straw bale, pole, log cabin, adobe, underground, etc. (all found in Suttons Bay Township's rural area)? And one is limited by Michigan case law that does not let one prohibit a construction type (mobile home) – result is no uniformity in form to latch onto. (In a more urban neighborhood one can more easily define a uniform community character to build form regulations around.) The same is true for barns (traditional wood, steel pole barn, etc.) So by the time you "dumb down" the form elements in the code to stay legal you end up having a zoning ordinance that is not really a form based code/zoning, and a lot of time and money was spent to develop an ordinance that accomplishes the same things as can be done with a conventional zoning ordinance. Also the "dumbed down" ordinance also results in what may properly not called form based code/zoning.

²⁶Timesheets were maintained in Outlook software and paper and tallied for this purpose. Exact accounting was not applicable and not retained. Overhead hours for this project were notably higher, but not included in the comparison here. MSU Fisheries and Wildlife proposals required travel for this project to have pre-approval (pursuant to a policy applicable to MSU campus based staff) for off campus Educators. This increased transactional costs several fold for field Extension Educators (Brederland and Schindler), MSU Extension business office, and Fish and Wildlife/Sea Grant business office and administration.

So the end result is a conventional zoning ordinance that, like Traverse City – will have many form based elements in it, will have much more streamlined processes, and may at least have form based zoning in the more dense residential and commercial zoning districts – may be a better solution in rural Michigan.

Appendixes

Appendix A: Master Plan for a Form Based Code versus the Suttons Bay Joint Master Plan

Email from Egan to Schindler: Tuesday September 3, 2013, 2:32pm.

Kurt,

In this email, I am speaking for myself. This is not a formal statement representing either the Suttons Bay Township Planning Commission or Township Board.

First of all, I feel that we all need to be reminded that the goal of this project is to discover if form-based code will work in a rural township and THEN ask if Suttons Bay Township wants to consider adopting a form-based code. We are moving ahead of ourselves in talking of amending the Master Plan that is barely two years old.

Second, I have re-read the portions of the *Suttons Bay Community Joint Master Plan* applicable (I feel) to the advancement of a form-based code in the township (pp. 56-59). I have also re-read MCL 125.3833. During the writing of the Master Plan, the Joint Planning Commission (JPC) spent much time on ensuring that a possible future township based form based code would be possible under the Plan. The JPC felt that the requirements were all accounted for. There was no way to be more specific at that time without doing the work required for a form-based code *before* writing the Master Plan. The JPC felt, and I continue to feel, that a development of a form-based code advancing the goals of *Suttons Bay Community Joint Master Plan* was supported in the Plan.

I have always been taught that the Master Plan is supposed to be a generalized vision document, not a specific list of standards. In fact I have been consistently trained to NOT allow specifics into a Master Plan, and that by doing so it could constrain the community in the future by not allowing it to adapt with the changing needs of the community.

Third, if the township does indeed support moving to a form-based code, with the possible exception of rezoning current under-developed housing developments in the township I feel that the issues and solutions that were flushed out at the charrette in August can be expanded upon within the goals, objectives, and strategies currently found in the *Suttons Bay Community Joint Master Plan*. I realize it would be ideal to have the Master Plan reflect these goals in a more specific manner, but I do feel that the township's movement in the direction it is headed is supported by the master plan as currently adopted.

I also realize that we will need to discuss this further.

Kathy

From: Schindler, Kurt [<mailto:schindl9@anr.msu.edu>]

Sent: Tuesday, September 03, 2013 11:35 AM

To: sbtplan@centurytel.net

Cc: cortrigh@msu.edu; Pape, Glenn

Subject: RE: questions | NEEDS RESPONSE

Dear Kathy;

Concerning question number 7:

We did the Charrette because the Joint plan was not quite there as an illustrative plan for a form based code. Now we almost have all the material we need, but the form based zoning has to be based on a plan/zoning plan (MCL 125.3203(1)). So somehow we need to have a plan for the township that includes more of the "zoning plan"/"illustrative plan" stuff.

We could adopt a sub-area plan (MCL 125.3835) for the "zoning plan" (separate document, maybe just the township adopts). It is "subarea" in that it is not a plan for the entire planning jurisdiction (village and township) but just the subarea that is the township. So "subarea" may work. But today there is no longer a joint planning commission, so the township's entire jurisdiction is the township (not the village) and that is not a "subarea." This one needs to go and ask the township's attorney to see if it is a viable option.

We could adopt a supplement to the *Suttons Bay Community Joint Master Plan* that is just the “zoning plan”/“illustrative plan” part. The “supplement” would just apply to the township, and would be in addition to the *Joint Master Plan*, not amending or instead of it. Thus could be adopted by just the township? Again a question for Richard Figura. Without a joint planning commission, I am not sure there is not any mechanism to amend or change the *Joint Plan* (since such amendments would have to start with work by the joint planning commission). I know there are some municipal attorneys that advise their client if there is no longer a planning commission, then there is no longer a master plan. I assume the same would be true for a joint planning commission and a joint master plan – but that is also a question for Figura.

I do not see anything in the *Suttons Bay Community Joint Master Plan* that provides directive or instruction to amend, supplement, that *Joint Plan*. So I would think we could do one of the above without involvement of the village. But that type detail may be contained in the Joint Planning Commission Agreement/Ordinance, of which I do not have a copy. Whatever would be adopted would be a separate volume, under separate cover.

Did the Suttons Bay Township Board adopt a resolution reserving the right to adopt a plan to themselves (MCL 125.3843(3)), or does the Suttons Bay Township Planning Commission still have final plan adoption authority?

(Just as an aside note: I notice the *Joint Plan*'s section on “related plans” did not include the Andrews Study which is what we hung our hat on for the village's Form Based Code. With that no longer listed, does that mean there is no longer a plan for the Village Zoning ordinance to be based on? This is a rhetorical question, not expecting and we do not need an answer.)

(Another side note: the *Joint Plan* does not include treatment of Compete Streets (public transit facilities), as now required (MCL 125.3833).)

So here is a list of what should be in the “zoning plan” section of a master plan for a form based zoning ordinance:

Proposed schedule of regulations -- not found in the *Joint Plan*. (This needs to be added.)

Building height

Lot area

Bulk

Setbacks

Standards or criteria to be used to consider rezonings – side bar on page 58 of the *Joint Plan* (But maybe could be beefed up a bit)

Future land use map – page 56 of the *Joint Plan* (But it is not an illustrative plan for a FBC, that needs to be done.)

Explain how land use categories in the Future Land use map relate to districts on the zoning map – figure 4.2 on page 59 of the *Joint Plan*. (But it is written for the current zoning, and does not present the info for a re-write of the township's zoning into a FBC, that needs to be done.)

Explain how land use categories in the illustrative plan map relate to districts on the regulating plan (zoning map) – ditto for above, just using FBC terminology

Proposed zoning map/regulating plan map – on page 60 of the *Joint Plan*. (But it shows current zoning, not proposed zoning map/regulating plan for a FBC, that needs to be done.)

Description of each zoning district (general purpose, class of uses in, general locations of) – page 58, and intermingled on pages 37-42, of the *Joint Plan*. (But it is written for the current zoning, and does not present the info for a re-write of the township's zoning into a FBC, that needs to be done.)

(And yes, do need a list of industrial parks in the county, question #6.)

I did not copy this email to Richard Figura, as I suspect I do not have the authority or right to rack up billable hours for the township from the township's municipal attorney.

-----kurt

Appendix B: Outstanding Questions for Township Attorney Richard Figura

1. Need to amend Master Plan or not? Can it be amended simply by adding a supplement, an Subplan (MCL 125.3835).

Kurt: We did the Charrette because the Joint plan was not quite there as an illustrative plan for a form based code. Now we almost have all the material we need, but the form based zoning has to be based on a plan/zoning plan (MCL 125.3203(1)). So somehow we need to have a plan for the township that includes more of the “zoning plan”/“illustrative plan” stuff.

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Did the Suttons Bay Township Board adopt a resolution reserving the right to adopt a plan to themselves (MCL 125.3843(3)), or does the Suttons Bay Township Planning Commission still have final plan adoption authority? Proposed schedule of regulations -- not found in the Joint Plan. (This needs to be added.)

- Building height
- Lot area
- Bulk
- Setbacks

Standards or criteria to be used to consider rezonings – side bar on page 58 of the Joint Plan (But maybe could be beefed up a bit)

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Kathy: First of all, I feel that we all need to be reminded that the goal of this project is to discover if form-based code will work in a rural township and THEN ask if Suttons Bay Township wants to consider adopting a form-based code. We are moving ahead of ourselves in talking of amending the Master Plan that is barely two years old.

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[Figura did answer this question at a December 17, 2014 face-to-face meeting with Egan, Patmore, Cortright, Schindler and Figura present. He did not see any issue or problem with the township amending the Joint Plan as needed, and it would not call to question the ability for the joint plan to continue to be the master plan for the township]

2. This text is in the draft FBC zoning ordinance:

Section 9804.A.: "Reports of violation. Violations observed by residents of the Township may be reported to the Zoning Administrator to be investigated. This need not be in writing. The Zoning Administrator should keep the names of such residents confidential."

Kurt: Is this possible under FOIA (thinking it is not)

3. This text is in the draft FBC zoning ordinance:

Section 9803.3.a.:

"3. Voiding of permit. a. Any land use permit granted under this Ordinance shall be null and void unless the property is developed as proposed, within one (1) year. The Zoning Administrator shall notify the holder of the permit at least thirty (30) days prior to the expiration of the one year period, and before voidance of the permit is actually declared. The Commission may provide for a longer than one (1) year period for a special land use permit."

This may not be legal. More likely should be placed in the ordinance section on permit administration.

4. Distance apart for effective posting of property for "no trespassing."

The Michigan Trespass law requires the frequency of a sign that is "which are spaced so a person can see one sign at any point of entry to the parcel" in order for one to prosecute someone for trespass. I believe court cases have also established a distance between signs, but that is a Figura question, as I cannot find that court case.

5. Regulating by type of land use within a single zoning district. Can that be done?

Kurt does not think you can do this. This is a Figura question (we have quite a few of those already, maybe time to bring him in with the questions?)

MZEA, MCL 125.3201(2) requires that regulations be uniform within a zoning district. (Equal treatment under law.) Differentiating by parcel type is not contemplated in the MZEA, and would not be uniform within the zoning district.

One can create regulations that are uniform for signs within a zoning district, but I do not think you can do so based on type of parcel. (Type of land use within a parcel – "dwelling" is not a parcel type)

If you do go this route, then need to define "dwelling type parcel", "vacant type parcel", and

“commercial/industrial” type parcel”

Kathy would still like to ask if we can regulate signs by parcel/use type instead of by district (because I want the answer to be ‘yes’). My argument is that even within districts different uses get varying sign regulations. An example in the agriculture district is that dwellings can have a 2 sft sign and wineries can have 16 sft. Same district, different uses, and we are regulating by use. My argument to you on why my way could be considered FBC is that I am regulating signs per the ‘public realm’ in the rural area. The parcel use become the ‘form’ out in the rural areas. Come on Kurt – you have the think differently with FBC in the rural areas! (Am I gaining any ground here?)

Appendix C: Township Indicating it is not likely to adopt form based code

From: Kathy Egan [mailto:sbtplan@centurytel.net]
Sent: Wednesday, February 04, 2015 10:47 AM
To: Schindler, Kurt
Subject: FBC Project

Kurt,

Well, the planning commission met last night, and as it turns out you were more adept at reading them than I was. They did discuss all the options and finally settled on keeping with their current zoning ordinance and amending it to bring it up to date. They were most comfortable with that option. The draft FBC didn't offer a clear advantage over what they have now. They did make the point that there are aspects of the draft FBC that they like and want to keep. They'll start next month by prioritizing the articles/topics in the current ordinance and then get to work.

They also noted that when they embarked on this project (research) they didn't know if it would be better for the township or not, and they whole project has been worthwhile. They wanted to thank you and Rod, and were concerned about your feelings.

It didn't hit me until I was trying (unsuccessfully) to fall asleep last night what all this meant. I've spent over 1/3 of my planning years working with you and Rod on these FBC projects. I wasn't prepared for it all to end so abruptly.

I see that the MSU Receipt of Materials form needs to be done at a meeting where minutes are taken so I will put it on next month's agenda.

I called you at your office number because I would have rather told you this in person, but you weren't there, so I had to write it out.

Kathy Egan
Land Use Planner
Suttons Bay - Bingham
(231) 271-2722
Fax 231-271-2773
sbtplan@centurytel.net

Postscript:

This township chose to end the project before funding stopped. Michigan Sea Grant Coastal Community Development funds ends April 1, 2015. The township also received a Traverse City Rotary Charities grant for this project, which funds had not been used. It was recognized this project would not be done (e.g., a draft zoning ordinance ready for consideration for adoption) by April 1, 2015. The township was given the offer to have Schindler continue to work with the township to finish whatever part(s) of the draft zoning it wished, with an Michigan State University Extension technical services agreement (Level III cost recovery). The township did not elect to do so. The township has signed the MSU disclaimer to obtain a copy of the most recent drafts of the proposed zoning for their future use.

[March 18, 2015;
C:\Users\kschindler\Documents\wp\OtherCounty\Leelanau\SuttonsBayTwp\SuttonsBayTwpFormBasedCodeApplied ResearchFinal Report.wpd]