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STATEMENTS OF INTENT IN ZONING ORDINANCES

A THESIS

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STATEMENTS OF INTENT  
IN ZONING ORDINANCES

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## SUMMARY

The objectives of this study are to determine the extent to which statements of intent are presently used in zoning ordinances and to explore the potentials of such statements as a means for helping to overcome some of the problems which currently beset the zoning process.

A survey of zoning ordinances from all parts of the United States indicated that statements of intent (other than those in ordinance preambles) are to be found in about one out of four ordinances in existence today. However, the survey findings suggest that the use of intent statements is expanding rapidly. A sharp increase in their use was noted in ordinances dated 1955 or later.

Statements of intent (if properly prepared and employed) help all who use zoning ordinances to understand better the purposes of zoning and of zoning ordinances. In doing so, intent statements perform three main functions. First, they express the objectives of the zoning ordinance and its parts, objectives which are assigned to the ordinance by the local legislative body. Secondly, they describe the relationships which exist (a) between the zoning ordinance and the comprehensive plan; (b) between the zoning ordinance and other ordinances and codes which guide community development; and (c) between the several parts of the zoning ordinance itself, particularly the zoning district classifications. Finally, intent statements sometimes contain expressions of

policies which guide the administration of the ordinance or its parts.

The study does not present a definitive conclusion regarding the legal status of intent statements because practically no record of litigation could be found in which a statement of intent was a key issue. The fact that they are relatively new probably explains the dearth of appeals cases involving intent statements, although the quality of such statements undoubtedly is a factor also. In any event, very few guidelines based on court experience with intent statements are presently available to ordinance draftsmen. It does appear, however, on the basis of the evidence available, that courts of law do find statements of intent helpful. Where such statements have been included in ordinances, the tendency of the courts definitely is to use them as the need arises.

The study concludes that statements of intent are worthy additions to zoning ordinances. The study also suggests that the statements are evidence of a recognition by zoning practitioners that the purposes of zoning and of zoning ordinances rarely are evident in the regulations themselves. Intent statements are therefore regarded as necessary additions to zoning ordinances. They have become necessities because the contents of zoning ordinances are becoming increasingly complex and also because so many different groups of people have occasion to use the regulations from time to time. Thus, paralleling the growing complexity of zoning ordinances is the need for simplicity.

The study recommends that communities desiring to add intent statements to their zoning ordinances first determine just what land

development objectives are to be accomplished by the application of the zoning ordinance. Once the community has formulated the policies which will guide its physical development, it is then ready to parcel out the implementation responsibilities among the various codes and ordinances. Those objectives to be accomplished by means of the zoning ordinance thus will have been identified clearly.

Concluding the study are a number of examples of statements of intent as they might be used in the various parts of the zoning ordinance. The systematic use of such statements in conjunction with the detailed use, height, and area requirements of the district regulations is stressed.



## CHAPTER I

### INTRODUCTION

Among city planners and others interested in and concerned about future urban development there now appears to be general agreement that zoning is not performing adequately the variety of tasks it has been assigned. To be critical of contemporary zoning practice seems to be the vogue among these groups and the literature is laden with the general theme that zoning is in a highly confused state. These writings claim that zoning is too negative and too political, or that planners and planning agencies are forced to devote excessive amounts of their time and resources to the zoning process; they claim that zoning is too flexible or not flexible enough, too easily changed or that it is strait-jacketing cities. Zoning is literally under indictment by these groups on the grounds that it is either excessive or inadequate in almost every respect.

Many among these critics, especially among the city planners, go well beyond the point of simply being critical of zoning. They not only discount the importance of the entire zoning process, but they also express a desire to be freed from its shackles, to have no part in it whatever. They choose instead to devote their time and attention to other and (in their opinion) more significant aspects of community development.

Few informed persons would deny that the current practice of

zoning leaves much to be desired. The evidence of its ineffectiveness as a tool of community development is clear. All too often, zoning must appear to the citizen as a confusing, illogical, and even capricious activity in which his local government somehow has become entangled. And, in too many instances, zoning has become an end in itself, a process conducted with little or no consideration of its cumulative effect on the community.

But, agreement that zoning is proving inadequate to the tasks before it need not (and should not) be interpreted as meaning the end of zoning. The zoning process is well-established and the likelihood is that its main features will remain virtually unchanged for years to come, despite the many shortcomings. This simple truth is overlooked often, especially by the critics of zoning.

The search for ways to improve the zoning process has to continue. That search must proceed along a broad front because the nature of zoning is such that there will be no single break-through to sweep away at one time all of the ills now plaguing the process. Future changes, in all probability, will have to be confined to the details of zoning, to an addition here or there, and to the expansion or embellishment of its parts as they are now conceived.

Expanding the role of statements of intent in zoning ordinances is one of the ways in which zoning might be improved. Because statements of intent involve the formulation and expression of policies which would govern the administration of zoning regulations, their expanded use is a promising means for overcoming a number of the present inadequacies of the zoning process.

### What Are Statements of Intent?

Statements of intent are those parts of a zoning ordinance which set forth and explain the objectives and other significant features of the various ordinance provisions to which they are related. As used presently, they are associated most frequently with that portion of the zoning ordinance in which are found the use, height, and area regulations for the various district classifications. Statements of intent can be distinguished from other zoning ordinance provisions by means of: (1) their separate designations; (2) their content; and (3) the style of expression used in them.

Intent statements are included in ordinances under many different designations. What are referred to in this thesis as "statements of intent" appear in zoning ordinances as "Principles," "Guiding Principles," "Intent," "Conditions," "Description of District," "Purpose of District," "Limitations . . .," "Preamble," "Purpose," or "Intent of District," among others. Occasionally they are found in the form of a preamble to specific regulations. Statements of this type, of course, carry no special designation.

The content of statements of intent varies considerably but, in general, statements of intent are expressions of the goals, the desired end-products of the regulatory measures to which they pertain. They express aspirations and policies.

The style of expression employed in statements of intent is much less formal than that in other ordinance provisions. This difference is accounted for in part by the fact that intent statements

are used to convey the spirit and the general tone of the regulations rather than to control precisely some facet of land development. In performing these roles, intent statements become almost conversational in character. Thus, they contrast sharply with the stilted and somewhat stuffy language generally found in zoning ordinances.

#### General Purposes of Statements of Intent

Statements of intent are included in zoning ordinances primarily to aid in ordinance administration and interpretation. Such statements provide a means by which legislative bodies can describe the kinds of land development they desire to foster by the application of the regulations enacted. In a sense, they also supply to the governing body a forum within the zoning ordinance from which that group can summarize what it envisions as being the end result of the various regulations adopted. Such summaries of purpose, of course, are addressed to any interested party; however, they are meant to be especially useful to the courts when they are called upon to interpret the ordinance and to the various groups involved in its administration and enforcement.

Intent statements frequently are used as a vehicle for expressing the policies which govern the application and administration of the various zoning regulations. These policies may be expressed in general terms only or they may be stated very precisely. When couched in broad language, intent statements supply explanatory materials which are helpful guidelines for administering the ordinance. The statements serve a regulatory purpose in those instances in which their language is more precise and when specific requirements are expressed in the

statements.

### Objectives of the Thesis

The objectives of this thesis are: (1) to investigate the present use of statements of intent in zoning ordinances; (2) to determine the present legal status of statements of intent; (3) to explore potential uses of such statements in zoning ordinances; and (4) to recommend procedures for incorporating useful statements of intent into zoning ordinances.

### Methods of Investigation

The stated objectives were fulfilled in part by means of a random survey of more than 300 zoning ordinances, conducted in order to determine the extent and manner in which statements of intent are used presently. In addition, an opinion survey was conducted in order to ascertain the prevailing attitudes toward statements of intent of those experienced in their use in the zoning process. A search for court decisions involving statements of intent was undertaken to determine the general legal status of such statements and to identify the guiding principles regarding their use and applicability.

### Content of the Thesis

In Chapter II, the current use of statements of intent in zoning ordinances is described and evaluated. The material in that Chapter is based primarily on the survey of ordinances from nearly every state in the nation. The results of the opinion survey are reported in this

Chapter. Also summarized in the Chapter are the results of the search for court findings in cases involving statements of intent.

The emphasis in Chapter III is on the nature of statements of intent and their location within the various parts of zoning ordinances. Also reviewed and summarized in the Chapter are the basic reasons for including intent statements and the key steps involved in their formulation and incorporation within zoning ordinances.

## CHAPTER II

### STATEMENTS OF INTENT IN ZONING ORDINANCES TODAY

A survey of 300 randomly-selected zoning ordinances was conducted in order to determine how widely statements of intent are used and, where used, the manner in which they are employed. These ordinances represented cities and counties from every region of the United States. Forty-five of the 50 states were included.

In addition, inquiries were made of two selected groups--one of localities, the other of individuals--to obtain an evaluation of statements of intent by persons familiar with their use. The first was directed to 26 cities and counties, selected at random, whose zoning regulations were found to include statements of intent. The second questionnaire was sent to a small group of nationally-known zoning authorities. The details of the ordinance survey are included in Appendix A.

The results of these investigations are presented in three parts in this Chapter. Presented first is an overview of the use of statements of intent. This is followed by an analysis of the main functions performed by statements of intent in zoning ordinances and of the results of the search for court cases involving the statements. An evaluation of intent statements in current use concludes the Chapter.

### Current Status of Statements of Intent

Statements of intent appear in zoning ordinances from every region of the United States. If the results of this investigation are indicative, their use is not so uniform among the states comprising those regions, however. Only 23 of the 45 states represented by the 300 zoning ordinances included in the survey, or about half of the total, were found to have ordinances containing statements of intent. Eighty-one cities and counties from those 23 states include intent statements in their zoning regulations. Thus, statements of intent were found in slightly more than one-fourth (between 26 and 27 per cent) of the ordinances surveyed.

Survey results indicate that the use of statements of intent varies greatly among the country's regions. The North Central Region led all others in the nation with statements of intent in 43 per cent (20 of 46) of the ordinances from its states. The South Atlantic Region ranked second with intent statements in 25 of 78 or 32 per cent of the ordinances reviewed. The Mountain and Pacific Region was in third place at 30 per cent, with 15 of the 54 ordinances reviewed containing intent statements. Thus, these three leading Regions accounted for 60 of the survey total of 81 ordinances found with statements of intent. Sixteen of the 23 states with such ordinances are in these three Regions. Although the use of statements of intent is widespread in the nation, it appears from the survey results that there is great disparity in their use among the Regions and that this differential is even more pronounced among the states of the Regions.



(For further details, see Appendix A.)

Statements of intent are a relatively recent addition to zoning ordinances. It is generally agreed that they first appeared sometime around 1950, although there is no certainty about the precise year. This commonly-accepted belief is supported by the evidence produced in the course of this investigation. The effective dates of 76 of the 81 survey ordinances containing statements of intent are known and all but one are dated 1950 or later. Nearly half of the 76 ordinances bear 1960 dates or later and more than three-fourths of them appeared in 1955 or later.

Evidence upon which to base conclusions about trends in the use of statements of intent is limited. However, it is of interest to note that 90 per cent or 71 of the 79 ordinances in the survey, dated between 1950 and 1954, did not contain intent statements. Fifty-eight per cent or 42 of the 72 survey ordinances, dated between 1955 and 1959, were without such statements as were 60 per cent or 54 of the 91 ordinances dated 1960 or later.

#### Functions Performed by Statements of Intent

As indicated previously, statements of intent are included in zoning ordinances primarily to aid in their administration and interpretation. Attention is focused, in this part of the thesis, on those things intent statements do--the functions they perform--which are helpful to those persons who are responsible for administering or interpreting zoning ordinances. Actually, the emphasis here is on the administrative values of intent statements because ordinance interpre-

tation is essentially a part of ordinance administration. And, while it is recognized that intent statements do have much value in those cases which do get into the courts, it must be remembered that these relatively few cases pale by comparison with the numbers of zoning questions which arise and are settled locally--by the zoning administrator.

Day in and day out, in face-to-face encounters with the people who are regulated by the ordinance, zoning administrators are called upon to explain the thinking, the reasoning, and the rationale behind that ordinance. To meet this kind of challenge, it is certain that, where the legislative body does not formally state its intent with respect to that ordinance and its parts, the administrative personnel are obliged to develop their version. They do this almost naturally. They do it because it is demanded of them by the people who are regulated by the ordinance.

Statements of intent perform three main functions in zoning ordinances today. They express: (1) ordinance objectives; (2) ordinance relationships; and (3) administrative policies. These main functions are examined in greater detail in the following pages.

#### Statements Express Ordinance Objectives

By far the most numerous among the statements of intent found in the ordinance survey were those whose main purpose is to express the objectives of the regulations to which they pertain. As might be expected, this type of intent statement, without exception, was found related to that portion of the zoning ordinance which contains the use, height, and area regulations for the various district classifications.

These statements of intent consist usually of generalized descriptions of the kinds of development which the legislative body meant to foster by the enactment of the particular regulations. These statements typically contain such phrases as: ". . . is intended to . . .," ". . . intended primarily for . . .," or ". . . the primary purpose and intent of . . .," followed by short paragraphs (usually) which summarize how the governing body visualized that the ordinance provisions might look when translated into buildings, lots, yards, and other features of land development.

The presence of these kinds of intent statements in zoning ordinances is a recognition that there is something more to zoning district regulations than yard dimensions, building heights, or use limitations. There is also that which all of the details together produce and these statements of intent attempt to describe that product, to convey the spirit of the detailed regulations, and to capture the tone and character of the development they were meant to encourage.

Statements of intent which express ordinance objectives assume a variety of forms, as is evident in the examples which follow.

Some relatively simple statements which express objectives of district regulations follow:

R-1A Single Family Residential District

This district is intended to include those quiet residential areas for single family homes on spacious lots. (1)

Section 921. Principal Permitted Uses for R-4 Districts.

This district classification is intended primarily for high rise apartments to provide high density multiple family dwelling

units, together with certain necessary institutional uses. (2)

"C-1" Neighborhood Commercial Zone

. . . The primary purpose and intent of this zone is to serve the neighborhood needs for convenience goods only. The stores are intended to fit into the residential pattern of development and not create a traffic hazard. (3)

Industrial W District

Primarily for wholesale activities, warehouses, and light industrial operations which require a central location. (4)

Compare the statements above with the following illustrations

(note especially the difference in tense):

R-1 One (Single) Family Dwelling District

The lands in this district are developed predominantly with single family dwellings, however, the prevailing lot areas are less than those of the R-1A District. Then, too, in this district there is found a greater variety of uses. (5)

Section 2. Commercial District

These are commercial districts providing personal services and the retailing of durable and convenience goods to the surrounding community. Because these commercial areas are subject to public view, which is a matter of important concern to the whole community, they should provide an appropriate appearance, ample parking, controlled traffic movement and suitable landscaping. The proper development of commercial uses in this district is not only a right under the law, but a responsibility to the entire community. (6)

Industrial District M

This district is composed of lands so situated as to be well adapted to industrial development but where proximity to residential or commercial districts make it desirable to limit the manner and extent of industrial operations. The purpose of this district is to permit the normal operation of the majority of industrial uses under such conditions of operation as will protect abutting residential and commercial uses and adjacent industrial uses. (7)

Somewhat more complex intent statements which express objectives of zoning district regulations follow:

R-0 Zone One-Family Residential

Intent—By virtue of its location within the comprehensive land development plans for the City of East Point, the R-0

Zone is established in order to protect residential areas now developed with one-family detached dwellings, and adjoining areas, presently undeveloped or in agricultural usage, likely to be developed for such purposes. Only a few additional and compatible uses are permitted. The regulations of this Zone are intended to:

- (a) Insure the best use of the land.
- (b) Insure and protect the orderly and proper future development of the land according to its best indicated potential use for single-family dwellings.
- (c) Protect and promote a suitable environment for family life.
- (d) Discourage any use which would generate other than normal residential area traffic on minor streets.
- (e) Discourage any use which, because of its character or size, would create excessive requirements and costs for public services. (8)

#### C-P District

Intent—The intent of the planned shopping center district is to permit the establishment of retail shopping facilities for a neighborhood, community or region which shall provide goods and services for the people to be served, minimize traffic congestion on thoroughfares and public streets in its vicinity and which shall best fit the general land use pattern of the area to be served. The protective standards for site development contained in this section are intended to minimize an adverse effect of the shopping center on nearby property values, and to provide for safe and efficient use of the shopping center itself. Submission of a market analysis is intended to serve as a guide to the City Council and Planning Commission for the evaluation of an application in terms of the need or desirability to change the comprehensive zoning plan in the public interest and the amount of land included in the rezoning application which could be realistically supported in commercial use. Such information is further intended to substantiate a finding that the proposed development will promote the general welfare of the city. It is further intended that any financial responsibility of the developer for work to be done on city streets bounding or giving access to the shopping center, which arises out of the provisions of this chapter, be made the subject of a contractual agreement between the developer and the city and that such contractual agreement may contain provisions to effectuate any other section of this chapter.

In general, the three types of shopping centers provided for in this section may be described as follows:

Neighborhood Shopping Center—provides for the sale of

daily living needs of the people, "convenience goods" such as foods, drugs, hardware, and personal services. It may contain ten to fifteen stores generally oriented around a supermarket on a site of from four to ten acres in size. It requires approximately seven thousand five hundred to twenty thousand people living close to the center to support it.

Community Shopping Center--provides in addition to "convenience goods" a wider range of facilities for the sale of "shopping goods" such as apparel and furniture, as well as banking and professional services and recreation. It may contain twenty to forty stores generally oriented around a junior department store or variety store on a site of from ten to thirty acres in size. It requires approximately twenty thousand to one hundred thousand people within a short driving time from the center to support it.

Regional Shopping Center--provides a variety and depth of "shopping goods" comparable to the central business district including general merchandise apparel and home furnishings as well as a variety of services and recreational uses. It may contain fifty to one hundred stores oriented around one or more major department stores on a site of thirty five or more acres. It requires approximately one hundred thousand to two hundred fifty thousand people located within a reasonable driving time from the center to support it. (9)

#### IP District (Industrial Park)

The IP District (Industrial Park) is established to provide for and encourage the grouping together of such light industrial uses as are capable of being operated under high standards as to location and appearance of buildings and the treatment of the land about them are unobtrusive and not detrimental to surrounding commercial and residential uses. Neither principal nor accessory uses permitted shall be interpreted to include any use which by reason of its nature or manner of operation will create conditions hazardous, noxious or offensive to the community when located in an IP District. (10)

#### Statements Express Ordinance Relationships

Ranking second in number among the statements of intent included in the survey are those in which relationships between the zoning ordinance or its parts (especially the district regulations) and other community development policies are expressed. Statements in the survey collection were confined to those which indicated the existence of relationships between provisions of the zoning ordinance and the activities

of the local planning agency. These relationships, however, were never found described in detail. In most statements, the references to these relationships were coupled with an expression of district objectives and took the form of phrases such as: ". . . in accordance with the Master Plan . . . ," ". . . in conformance with the General Community Guide . . . ," or, as in some cases, ". . . to implement Master Plan policy . . . ." Some statements described the relationship more precisely by tying the ordinance provisions to a particular portion of the community's Comprehensive Plan such as the Land Use Plan or the Major Thoroughfare Plan.

Not all of the relationships expressed in these statements of intent are those between the zoning ordinance and some other facet of the community's development policy. Such statements are used also as a place in which to express relationships among the various parts of the ordinance itself. Very few illustrations of this use of intent statements were found other than the type which compare one district with another as a means of differentiating among the several districts. See especially the Multiple Family Residential District extract from Berkeley, California, in the examples below.

The following are examples of the use of intent statements to express relationships between the zoning ordinance and other policies of the community:

#### R-1 Single Family Residential Districts

The purposes of the Single Family Residential Districts, herein called R-1 Districts, shall be to: (1) recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan . . . (11)

#### R-0 Zone One-Family Residential

By virtue of its location within the comprehensive land development plans for the City of East Point, the R-0 Zone is established . . . (12)

#### R-4 Multiple Family Residential Districts

The purposes of the Multiple Family Residential Districts . . . shall be to: (1) implement Master Plan policy by encouraging development of relatively high density residential areas which are characterized by a less intense and more open type of development than is found in the High Density Residential Districts . . . (13)

#### Rural Village Center Zone

The purpose of this district is to provide retail shopping facilities, planned and designed for the convenience and necessity of a suburban or rural neighborhood. Such Rural Village centers shall be developed according to an approved plan and located in accordance with adopted neighborhood, community or area plans. The regulations are designed to maintain the suburban character of duly designated commercial areas located along Scenic Routes as designated, and to provide safe ingress and egress to and from Village Centers. (14)

Though not a preamble to a set of district regulations, the following provision is an interesting way of relating the zoning ordinance to other development policies of the community:

#### Chapter I, PURPOSE, Article 1-2

The City Planning Commission of Marianna, Arkansas, having made a comprehensive study of present condition and future growth of the City and its neighboring territory and having prepared and adopted a Land Use Plan, finds that this ordinance would carry out the intent of the Land Use Plan . . . (15)

One of the more direct expressions of the relationship between the zoning ordinance and planning activities in the survey collection is the following:

#### 1.20(3) Article I, Purpose of Zoning Ordinance

Prior to adoption of said Zoning Ordinance, the City of Hollister caused to be prepared and officially adopted a General Plan, delineating in general terms the future use of land throughout the City and providing a long range guide to the zoning districts and district regulations in said ordinance . . .



1.30(1) . . . The Zoning Ordinance is based on the general pattern of future land uses shown in the General Plan, and on the principles for future land development expressed in the report on the General Plan . . . (16)

The following intent statement contains an interesting (though negative) recognition of the necessary relationship between the zoning ordinance and other community development policies:

Article 16, "I" Industrial District

1601. Primary Intended Use.

In the Borough of Bernardsville there is no need nor desire to provide for any industrial uses of property. Nevertheless, recognizing that existing land uses must be considered in the development of any comprehensive plan, particularly since such uses may be continued indefinitely under existing law, and recognizing the existence of a quarrying and allied use of land in the Borough . . . (17)

#### Statements Express Administrative Policies

A third function performed by statements of intent in zoning ordinances is that of expressing the policies which govern the application of various parts of the ordinance. Intent statements in this category are found most often related to the district regulations portion of zoning ordinances (as was true of intent statements which express ordinance objectives and relationships). In this position, they provide the means whereby the governing body can express the policies it wishes to establish to limit the application of the district regulations. Sometimes included, for example, are specific restrictions on re-zonings involving the zoning district or districts to which the policies are made applicable. Frequently found in intent statements of this kind are directives from the governing body which are meant to regulate the establishment of the zoning classifications to which the directives apply. Thus, these intent statements are

similar to general regulations which pertain to a single district classification. The contents of such intent statements are rules laid down by the legislative body and those rules modify or limit the detailed ordinance provisions to which they apply.

Statements of intent which express administrative policies are used much more generally in zoning ordinances than are those which set forth ordinance objectives and relationships. They are used commonly in several parts of the ordinance text, particularly in relation to the district regulations.

The following ordinance extracts are intent statements which govern the application of zoning district regulations:

#### R-4 Neighborhood Apartment District Regulations

##### Sec. 11-1313

. . . It is intended that this district classification be applied in areas where one-family homes, two-family homes and multiple family apartments are the proper uses, as developed from density standards of the Master Plan. (18)

#### District Regulations: CC Commercial District

##### Sec. 16-219

9. It is the intent of this article and this section to designate no areas as a CC Commercial District in which there is at the date of adoption of this article any residential or other nonconforming use. It is the further intent of this article and this section that insofar as possible all neighborhood commercial and service areas in newly-developed portions of the city shall take place in a CC Commercial District, in order to decrease traffic and parking congestion and to preserve the residential values of the city. (19)

#### Sec. 4-B. "C-2" Planned Shopping Center District

##### . . . 2. Conditions Precedent to Zoning District Change.

No area shall be zoned for "C-2" use:

(a) Unless the area has an acceptable relationship to improved major thoroughfares which possess an adequate capacity to carry the additional traffic generated by the commercial district . . . (20)

#### Section 2201. Planned Shopping Center.

(a) The following regulations applying to planned shopping centers are intended to assure harmonious, efficient and convenient retail shopping facilities and to permit the establishment of such shopping centers as an integral part of residential expansion in newly developing sections of the City. A shopping center shall be composed of at least five (5) individual uses, any one of which shall not occupy more than forty (40) per cent of the total buildable area of the planned business district involved. A planned shopping center shall include a minimum of four (4) acres and may be established as a waiver use . . . Before acting on a request to establish a planned shopping center, the Board of Appeals on Zoning Appeals shall secure a report from the City Planning Commission which shows clearly that the resulting shopping center will contribute to the sound and orderly residential development of an area . . . (21)

#### Article 8. Local Retail Districts.

##### Preamble.

The B2-1 to B2-5 Restricted Retail Districts are designed to cater to the needs of a relatively larger consumer population than served by the Local Retail Districts, and so a wide variety of business uses are permitted for both daily and occasional shopping.

Business establishments are restricted to a maximum floor area of 12,500 square feet each so as to limit the volume of vehicular and pedestrian traffic in and about restricted retail centers to a level consistent with their function and locations. (22)

#### Article 16, "I" Industrial District.

##### 1601. Primary Intended Use.

. . . if any industrial use is to be located anywhere in the Borough of Bernardsville it is hereby declared that all industrial uses of property in the Borough be hereafter confined to the general area of the present industrial use by the zone boundaries herein established, and any industrial use of property within the Borough shall hereafter be located within said zone boundaries. To that end an Industrial District is hereby established. (23)

#### Flood Hazard District FH

. . . These districts [Flood Hazard] shall only be rezoned by the Board of Commissioners to a more intensive classification upon written finding of the Director of the County Public Works Department that a flood hazard no longer exists due either to a change in natural conditions or to a change

accomplished or proposed by the owner of the property and after receiving the recommendation of the Planning Commission. (24)

An interesting and unusual provision adopted as a guide in the use and application of a zoning ordinance follows:

Guiding Principles

F. No special favors or privileges shall be granted to any individual or group of property owners and no permit shall be issued under the terms of this Ordinance which will or might reasonably tend to destroy the established economic or social uses and values of adjacent or surrounding properties:

On every application of this Ordinance to any given area, the relative importance of the interests involved shall be as follows:

First, established conforming uses of adjacent or surrounding properties having an equal or higher classification;  
Second, the cost of tax-supported and other public services to the area affected, and the increased or decreased share of this cost which might be borne by said area if a proposed use or change of classification is permitted; and  
Third, the value of the proposed classifications to the orderly development of the neighborhood or area affected.  
 (25)

The only ordinance provision found in the survey which takes cognizance of the time relationship which is shared by land use plans and the zoning ordinances based on them is the following:

ARTICLE I

Purpose of Zoning Ordinance

. . . 1.30(2) Because it is important to encourage compact development in order to provide for economy and efficiency in public services and utilities, it is the intent of the Ordinance to make land available for future urban development no more than approximately five years in advance of such development. This policy is intended to give moderate guidance to the location of future development without unduly restricting the location of such development. (26)

### Statements of Intent in Courts of Law

As was observed in Chapter I, one of the main reasons for including statements of intent in zoning ordinances is to aid in their interpretation. It was also emphasized earlier in the present chapter that the statements not only assist courts of law in their interpretative duties, but they also provide similar help to those individuals in the local government who have official responsibilities for the administration and enforcement of the zoning ordinance. The opinion survey respondents referred to earlier in this Chapter confirmed the belief that intent statements have been found useful in non-judicial interpretations of zoning ordinances, i.e., in the resolution of the myriad of questions which arise in the day-to-day administration and enforcement of the ordinance. However, because these respondents were city planners, zoning administrators, and zoning experts rather than jurists, they could not comment with authority on the value of the statements to courts of law and about court attitudes toward the device.

A search of case law was undertaken to determine how the courts have responded to the use of intent statements in zoning ordinances and to provide a summary of the legal factors which should be considered in the drafting of such statements. Unfortunately, this effort did not produce the results expected; in not one of the cases reviewed was there a clear-cut decision in which a specific statement of intent was the key issue.

Courts of law, of course, have dealt with the general question

of legislative intent in zoning matters. They have held repeatedly that legislative intent is to be found in the words of the ordinance itself (though not necessarily set apart in a statement of intent). The courts simply prefer to resolve questions of legislative intent on the basis of the contents of the ordinance without having to resort to external aids (27).

In their search for legislative intent, the courts also have held generally that they are obliged to consider the intent and purpose as it is expressed in the legislative act. Moreover, the courts usually hold that the declared purposes and policies of legislative bodies and their expressed preferences, if reasonable, must not be frustrated or defeated by court interpretation (28).

Cases in which an explicit expression of legislative intent is the central issue are rare if not non-existent. There are a few reported cases, however, in which statements of intent were a major consideration in the finding of the court. Ordinance preambles, for example, have been used by the courts to help determine legislative intent and to help supply guidelines to govern the exercise of a discretionary authority granted by a governing body to an administrative agency or officer. Thus, although they customarily are very general expressions of policy and purpose, even the preambles to zoning ordinances have been useful to the courts (e.g., Kozesnik v. Montgomery Township) (29). Just how far a governing body might carry this idea (in which the zoning ordinance consists primarily of declarations of policies and purposes with a heavy reliance on administrative procedures) is at the present time largely a matter of

conjecture.

Intent statements within the zoning ordinance itself also have been used by the courts in making their determinations. For example, in Siller v. Board of Supervisors of City & County of San Francisco (30) and In the Matter of Couch, Supreme Court of North Carolina (31), the courts brought together from within the ordinances involved the appropriate statements of intent and the pertinent specific regulations to form the bases for their findings. In the Siller case, for example, the court chose to interpret the variance provisions of the ordinance in the light of the expressed intent of the off-street parking regulations. The ordinance provision which required "special circumstances" and "unnecessary hardship" before a variance could be authorized was modified by the off-street parking provisions which, the ordinance stated, were to be interpreted as a step toward "relieving traffic congestion" by requiring "ample parking facilities." On this basis, the court upheld the conclusion of the planning commission (which authorized the variance reducing the number of required parking spaces) that requiring unneeded parking spaces which would not help to relieve congestion and which would be more than ample would, therefore, constitute a special circumstance and unnecessary hardship.

In the Couch case, the North Carolina Supreme Court construed two provisions of the Durham, North Carolina, zoning ordinance together to provide the basis for its decision to reverse the action of the trial court. The trial court had affirmed the Durham Board

of Adjustment's denial of a permit for a "car wash service station" in a C-1 Local Community Commercial district. The Board voted three to two to grant the permit but this amounted to disapproval since four members were required to react favorably in order for the application to gain approval.

The North Carolina Supreme Court combined the following provisions in reaching its decision: (1) the use regulations of the district which authorized, among others, "automobile service stations for the sale of gasoline, oil, and minor accessories only, when no repair work is done except minor repairs made by the attendant"; and (2) the intent statement, listed last among the uses permitted in the district, and which reads as follows: "It is the intent to limit the commercial uses permitted in this zone to those uses properly incidental to the needs of the local residential neighborhood in which the commercial use is situated . . ."

Applying the doctrine that the whole includes all of the parts, the Court concluded that the petitioners for the car wash service station were entitled to a permit as a matter of right.

While the cases cited and those referred to here do indicate how some courts have used intent statements, these citations and references obviously do not represent enough court experience to justify drawing any final conclusions about how the statements should be used and the form they should take. It is possible, however, to formulate some tentative guidelines to the use of the statements based on the court experience to date.



Because the courts prefer to find legislative intent within the ordinances themselves, ordinance draftsmen should encourage local governing bodies to include such expressions of purpose in their enactments. The fact that the courts appear to favor explicit declarations of purpose also should be a stimulus to the governing body to add them. The evidence also suggests that the courts frequently have to search to find an adequate basis upon which to evaluate the ordinance and a particular issue at hand. Where they deem it necessary, the courts will look beyond the ordinance itself to its preamble and to other external aids in search of the legislative body's intent. Placing the intent statements in the ordinance would eliminate this problem and make it possible for the courts to focus its full attention on what the legislative body says is its intent.

It appears that the courts welcome the inclusion of statements of intent in ordinances. The evidence upon which this conclusion is based, as indicated previously, is limited. It is based primarily on court actions in non-zoning matters since there are so few cases which involve a zoning question in which an intent statement is an important consideration.

The dearth of litigation involving specific statements of intent can be explained largely by two factors: time and quality. Time may be the key. It may be, simply, that not enough time has elapsed since the general appearance of intent statements for them to have become widely involved in litigation. As noted previously, intent statements have been in use generally since 1950 and most of

them are found in ordinances which bear a 1955 date or later. Further evidence of their newness is provided by the fact that two of the three cases cited were heard in 1962. The third case was heard in 1957.

The quality of statements of intent undoubtedly is also a factor which has played a part in limiting the number of court cases in which such statements are a central issue. Where intent statements are carefully formulated and are of high quality generally, many of the questions which would ordinarily have to be decided by the courts apparently are being resolved in the administrative process at the local level. On the other hand, where the policy statements are drawn broadly and the language in them is vague, they will be of little use to anyone, particularly the courts. Thus, statements of intent which are poor in quality are not likely to be given very much consideration in any appeals case.

#### Evaluation of Statements of Intent

There is general agreement among those persons involved in planning and zoning activities that statements of intent are useful and valuable additions to zoning ordinances. Without a single exception, every respondent in the opinion survey expressed this general attitude. Of course, not every respondent could be classified as being an unequivocal and enthusiastic proponent of the merits of statements of intent. But, on the other hand, not one in the respondent group possessed a predominantly negative opinion of the device. The general tone of the respondents' opinions regarding the value of

intent statements is best summarized perhaps by the phrase "cautious optimism."

Several references were made in survey responses to the double value hopefully represented in statements of intent found in zoning ordinances. These respondents suggested that the statements of intent, in and of themselves, were valuable additions to zoning ordinances. Moreover, an even greater value was attributed to what they represented in the way of thought and deliberation. They were accepted in this second conception as an indication that somewhere along the way the contents of those statements and of the ordinances containing them had been thought through and given careful consideration.

Many of the responses were similar in tone and content to the following:

In general I think it is an excellent idea to search out and make strenuous efforts toward some good statements of intent, not only for zoning but [also for] many other planning measures. A number of years ago, I think I would have been quite confident that such an accomplishment was within the grasp of every reasonable-minded planner and planning board. Obviously, if this had been the case someone would have done it by now. Planners and planning boards are not able to make specific statements of intent primarily because the whole structure within which we are working is not conducive thereto . . . Planners and planning boards have objectives which are only dimly perceived. With this sort of situation it is no wonder that we are long on nonsense regulation and very short on statements of intent . . . It may be too early to prepare comprehensive statements of intent because this very act may close out a valid objective and preclude the planners from achieving worthwhile goals in the public interest.

Now that I have made some extremely negative comments on the validity of the idea, let me take a more positive turn. In spite of hard work that may be involved and the pitfalls that lie in the path it is important that we press forward with this concept . . .

From our brief experience with our very thin description of the purposes of each zone, I have received a very favorable reaction to this idea. Perhaps the favorable reaction is based more upon the fact that each of the several zones is defined as to intent rather than there being a statement of overall intent for the entire ordinance. It seems clear to me that some well-conceived statements could be used by the Planning Board in its every day review of rezoning requests, and that they would serve as a valuable guide to head off some of the more absurd proposals that are now submitted by property owners and promoters. In short, it never hurts to let the other fellow know just what you are driving at. (32)

The general opinion of survey respondents is that statements of intent function mostly as a policy performance standard. In this sense, they are regarded as a first general condition which must be met before receiving further consideration in any zoning matter. Others (about a third of the respondents) hold the belief that intent statements serve primarily in an educational and an advisory capacity. Very few respondents looked upon their statements of intent as being any sort of bridge between zoning and planning or as a source of help in making the zoning process less complex and better understood. Not one respondent felt that intent statements perform any sort of directory or regulatory function.

Every respondent indicated that he would recommend the use of statements of intent to other local governments. This recommendation was based primarily on a recognition of the necessity for continuity and consistency in the administration of the zoning regulations. It stemmed, apparently, from a realization that there is considerable turnover in the personnel involved in the zoning process in any one locality. The composition of the legislative body, the planning com-

mission, the planning staff and other administrative personnel, and other groups involved in the zoning process such as the Board of Appeals, all are subject to personnel change. Once they are established as a part of the zoning procedure, statements of intent are a means to assure administrative continuity and consistency.

No clear opinion was forthcoming from the survey on the question seeking to determine which group of officials among the several involved in the administration of the zoning ordinance finds statements of intent to be most useful. The responses from persons with planning agencies indicated a belief that planning commissions and their staff people would probably be the prime users of such statements. On the other hand, responses from zoning experts indicate that, while the courts would likely be the most interested user of statements of intent, there may not be any real priority on it. They suggest that the group which finds the statements most useful might very well change from time to time and from point to point in the zoning process.

Although statements of intent were found in only one out of four zoning ordinances in the survey conducted as a part of this study, it is apparent that there has been a definite up-swing in the use of this device. Those localities and individuals experienced in the use of intent statements appear convinced of their value and usefulness. There are those among the experienced group who advise new users of the statements to use them cautiously and not to expect too much from their use.

Generally speaking, the use of statements of intent in zoning

ordinances today is really quite timid when the possibilities they hold are considered. At present, they are used neither systematically nor consistently. Their application to date can be described as being on a hit or miss basis. The glaring gaps left by this approach are a void of great consequence. Consideration is given in the final chapter to some of the ways in which some of that void might be filled.

## CHAPTER III

### SYSTEMATIC USE OF STATEMENTS OF INTENT

Since 1950 there has been a substantial increase in the use of statements of intent and today they are generally regarded as worthy additions to zoning ordinances. However, despite their increased use and acceptability, intent statements are not yet systematically employed in most of the zoning ordinances in existence today.

Presented in this Chapter is a brief discussion of the reasons why statements of intent should be used systematically in zoning ordinances. This is followed by a review of the key steps involved in the formulation of the development policies which constitute the content of most intent statements. The third part of the Chapter consists primarily of an examination of the nature of statements of intent and of their locations in the various parts of the zoning ordinance.

#### Justification for Statements of Intent

Statements of intent are used primarily to help clarify the purposes of zoning and of zoning ordinances. The statements thus are a response to the fact that the purposes of zoning and of the various parts of zoning ordinances seldom, if ever, are apparent in the details of the regulations themselves. The growing recognition of this fact is probably the most significant factor behind the

expanded use of intent statements.

What person could know, for example, that his community's zoning ordinance is enacted for the purpose of promoting the community's health, safety, morals, convenience, order, prosperity or general welfare, if it were not so stated in the ordinance (unless that individual happened to be familiar with the legislation enabling the community to undertake zoning in the first place)? By the same token, how could one be aware that his community's zoning regulations also are supposed to be made in accordance with a comprehensive plan designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote adequate light and air, among other things? And, similarly, unless they are expressed in the ordinance, how could anyone know with reasonable certainty what objectives the community's legislative body had in mind when it enacted the detailed use, height, and area requirements found in its district regulations?

Intent statements are the evidence that zoning practitioners have recognized the necessity of doing something to help make the purposes of zoning regulations better understood.

The fact that several diverse groups of people frequently have occasion to use zoning ordinances is ample reason in itself to justify the addition of intent statements to help clarify the ordinance objectives. This involvement of a number of different groups in the zoning process is illustrated by what takes place routinely in response to an application to change the zoning classification of a tract of land.



The local governing body's policies with respect to such changes and the apparent effect of the change (were it to be approved) on the community's comprehensive plan are basic considerations in a matter such as this. Therefore, the parties who have become involved in the process need some way to know what the pertinent policies of the community are and to become familiar with the purposes of the ordinance requirements whether they happen to be the property-owners who initiate the application and attempt to present a sound case in support of the change; the administrative officer and his staff who review the application originally and test it against whatever standards the local legislative body has set forth in the ordinance; or, the planning commission which studies the application to determine what effect the proposed change might have on the community's comprehensive plan and makes its recommendation to the governing body which, of course, makes the final decision on the application. Should there be dissatisfaction with the end result of this process, the courts also could play a part in the decision-making effort just described. Still other groups, such as the board of zoning appeals or an architectural review board, often are involved in the resolution of zoning questions.

The point here is that, with so many different groups involved in the zoning process, the zoning ordinance has to be as nearly self-explanatory (and self-administering) as it is possible to make it, for chaos would result if each of these parties were completely free to decide for itself what the ordinance purposes ought to be. Moreover, the memberships of these groups are subject to great change

because of resignations, deaths, political change, and so on. New members on the planning commission, the governing body, the board of appeals, or on the staff of the planning agency or of the administrative officer do not arrive on the scene with a complete understanding of the development policies of the community as they are expressed in the zoning ordinance. Yet, the development of the community has to proceed on the basis of principles and not on the basis of personalities which are involved.

Through the use of statements of intent, the various groups most often involved in the zoning process are afforded an opportunity to gain a better understanding of just what the ordinance contents are supposed to accomplish. By means of statements of intent, interested groups can be informed, for the statements make it possible to include in the zoning ordinance the essence of the comprehensive plan which relates to land development while avoiding the complications which would very likely accompany the adoption of the entire plan by the governing body.

#### Formulation of Community Development Policies

Any community wishing to incorporate statements of intent into its zoning ordinance must first determine just what its current official development policies are, if it has not done so recently. This is, of course, a very obvious and fundamental point, yet it is one which many communities persist in overlooking. Moreover, it is a very important point, because the contents of most of the statements

of intent to be included in the zoning ordinance will be based on these policies. This reliance on the community's development policies for intent statement content is particularly true in the case of the intent statements for the district regulations, for example.

This process should begin with the preparation (by the planning agency) of an up-dated statement of the community's development objectives and policies. This statement should be submitted for review by representatives of the official public agencies which are involved directly in guiding the community's physical development by administering the established policies. Included among the reviewers would be such agencies as: public works (streets, water, sewers), urban renewal, and planning; also, the administrative and enforcement officers for the zoning and land subdivision ordinances and for the construction and housing codes; the governing body of the community; and its chief executive.

The main purpose of this phase of the process would not be to formulate any new development objectives for the community. Moreover, this obviously is not the procedure for accomplishing that task. Rather, the aims are simply to review and up-date the community's development objectives as they are expressed in the comprehensive plan and, further, to clarify the implementation responsibilities of the various agencies. By means of this process, the land development objectives of the comprehensive plan which are to be implemented by the application of the zoning regulations would thus be clearly identified. Similarly, plan objectives to be carried out by implemen-

tation tools other than the zoning ordinance also would have been identified and assigned.

When the development objectives and policies of the community have been reviewed and when the features of those objectives and policies which are to be implemented through the zoning ordinance have been identified, the community is then ready to proceed with the task of formulating the statements of intent which, when incorporated into the ordinance, will play a significant role in bringing the community's aspirations to fruition.

#### The Nature and Location of Statements of Intent

The remainder of the Chapter is devoted to an examination of the nature of statements of intent and their location within the various provisions of the zoning ordinance. Attention is focused in this examination on what statements of intent accomplish (or help to make possible) when they are included in the ordinance and where and how the statements are placed within the zoning ordinance. For the purposes of this analysis, the provisions of a typical zoning ordinance are grouped under four main headings which are (1) the preamble; (2) the general provisions; (3) the district regulations, and (4) the administrative and enforcement provisions. It is within this framework that illustrations of how statements of intent might be used in conjunction with the various ordinance provisions are presented.

It is not contended here, of course, that statements of intent are an appropriate addition to each and every provision of the ordi-

nance. That simply is not the case. It is believed, however, that statements of intent can and do perform useful functions in zoning ordinances and that, if they are used properly, they can help strengthen the zoning process generally.

#### Preamble

The systematic use of statements of intent actually begins with the ordinance provision which sets forth the authority under which the legislative body is acting (when it enacts the zoning regulations) and the purposes which that body has in view. This provision is known by such names as "Preamble and Enactment Clause," "Preamble," or "Purpose," and it expresses in broad terms (in language directly from the enabling act) the purposes of the entire ordinance.

Many ordinance draftsmen of today, if they include any preamble at all in the ordinance, use only a very much abbreviated form in which only a brief reference is made to the legislative act upon which the zoning ordinance is based.

The approach assumes (1) that people are familiar with the enabling act, and therefore, know the general purposes for which zoning ordinances might be enacted, or (2) that they have ready access to the enabling act in the event a question regarding legislative purpose should arise. Both of these assumptions are rejected here and it is recommended that the long form of the preamble be employed. The language in the preamble should follow closely that which is in the act. The following example contains the language traditionally found in zoning enabling acts:

## Article 1. Purpose

The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health, morals, and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

They have been made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city. (33)

In the drafting of this first intent statement, one word of caution is in order: no purposes should be added to those appearing in the enabling act regardless of how appropriate they may seem to be.

There are, of course, other ways of expressing these same general purposes. The following extract from the Saginaw, Michigan, zoning ordinance, is a particularly interesting approach:

### Section 101. Purpose.

There is hereby established a comprehensive zoning plan for the City of Saginaw, Michigan, which is set forth in the text and map that constitute this ordinance. This ordinance is adopted pursuant to Act 207 of the Public Acts of 1921 as amended, for the general purpose of promoting the public health, safety and general welfare in the following manner:

1. Guiding the future development of the City in accordance with a comprehensive plan of land use and population density that represents the most beneficial relationships among the residential, commercial, manufacturing and recreational areas within the City.
2. Protecting the character and strengthening the social and economic stability of each of the areas mentioned above and encouraging their orderly development.
3. Bringing about the gradual conformity of the uses of land and buildings throughout the City to the comprehensive zoning plan set forth in this ordinance and minimizing conflicts among the uses of land and buildings.
4. Eliminating congestion in the streets and facilitating safe and convenient traffic access appropriate to the

various use of land and buildings throughout the City.

5. Forming a stable guide for public action in the efficient provision of public facilities and services and for private enterprise in building development, investment and other economic activities relating to the uses of land and buildings throughout the City. (34)

Still another approach is represented by the Preamble from the Proposed Zoning Resolution for New York City. Even though the provision itself is extremely brief, it indicates that a relationship between the preamble and the district regulations of the resolution does exist and that the purposes of the district regulations are simply specific elaborations of the basic purposes of the regulation expressed in the preamble which reads as follows:

Preamble

This amended resolution is adopted in order to protect and promote public health, safety, morals, comfort, convenience, prosperity, and welfare. These general goals include, among others, the specific purposes set forth in the preambles to the respective districts and groups of districts. (35)

General Provisions

This second grouping of ordinance parts is a catch-all category which includes everything in the ordinance other than the sections containing the preamble, the district regulations, and the administrative and enforcement provisions. Obviously, no statement of intent worthy of the name could be drafted to cover the wide variety of regulations which are lumped together under the title of General Provisions. In lieu of a general statement of intent for the entire General Provisions category, intent statements have been prepared for several selected regulations included in the General Provisions group.

Definitions. The primary purpose of the definitions section

of the zoning ordinance is to help simplify and clarify the language of the ordinance, where possible, and thereby to help make it more readily understood. This section of the ordinance, therefore, is a very important one.

The intent statement for the definitions section should give assurance to the ordinance user that most of the language in the ordinance is given its commonly-accepted meaning. The statement should also make it clear how and where the technical terms and those words which are used in a special way in the ordinance are defined. The intent statement might read somewhat like the following:

It is the intent of this ordinance that all of the words included herein, except those specifically defined in this section or which are defined at the point they are used in the ordinance, shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the words "plot" and "parcel"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied."

Off-Street Parking and Loading. The statement of intent for the off-street parking and loading regulations should make it clear initially that it is the community's intention, in the interest of lessening traffic congestion, providing adequate transportation, and securing economies in the provision of public streets, that the burden of providing adequate off-street parking and loading facilities is upon the private sector of the economy generally and upon the private citizen specifically. The statement should also indicate the community's awareness of the fact that the specific parking



requirements set forth in the ordinance may not be reasonable or adequate in all cases. However, the statement should make it very clear that the community's basic policy (no parking or loading on public rights-of-way) will prevail in every case. The statement should also indicate the willingness of the community to let performance be the final determinant of the amount of space required for parking and loading when it can be demonstrated that the ordinance requirements are patently unreasonable for the contemplated use and development of a parcel of land.

One intent statement for off-street parking and loading provisions, which demonstrates a general approach, reads as follows:

Purpose and Intent

The purpose of this Article is to insure the reasonable provision of off-street parking and loading facilities within the City of East Point, Georgia. The requirements contained herein are minimum standards only, and are intended to protect and promote the health, safety and welfare of the present and future inhabitants of the City of East Point. (37)

Another version might read as follows:

It is the intent of these regulations that adequate parking and loading facilities shall be provided on private property in order to promote the public safety, to lessen congestion in the public streets, and to help make possible the full use of existing streets for traffic movement unhindered by parking and by loading and unloading maneuvers conducted within the public streets. To achieve these purposes, it is further intended that upon the erection of any building or the use of any lot, there shall be provided on the lot not less than the minimum space required herein. Compliance with these requirements shall be a continuing responsibility.

Nonconformities. Whenever a zoning district is established originally or when it is changed, it is almost a certainty that there

will be numerous situations which do not conform precisely to the requirements of the district regulations. These nonconformities may be the existing structures themselves, the uses to which those structures are put, the use of land, or it may be that the size or dimensions of the parcels of land do not meet the area and dimensional requirements of the district regulations.

The mission of a statement of intent for such nonconformities is a relatively simple one: it should convey clearly the idea that, regardless of the nature of their shortcoming, nonconformities are, by definition, in conflict with the expressed policies of the community. The intent statement should put such nonconformities on notice that it is the community's intention to rid itself of these conflicts.

One intent statement for non-conformities which expresses the point tersely is as follows:

Chapter 14-104.

Nonconforming Structures and Uses.

It is the purpose of this section to discourage and eventually eliminate nonconforming uses and structures because they are detrimental to the orderly development of the City.

(37)

Another, somewhat longer statement of intent for nonconformities reads as follows:

Sec. 7.

Nonconformities.

(1) Intent. Within the districts established by this chapter or amendment hereof there exist lots, structures, and uses of land and structures which were lawful before this chapter was passed or amended, but which would be prohibited in the future under the terms of this chapter, or amendment.

It is the intent of this chapter to permit such of these nonconformities as create relatively minor friction to continue until they are removed by economic forces or

otherwise, and to require discontinuation within a reasonable period of nonconformities which are most detrimental to the areas in which they are located. It is not the intent of this chapter to encourage the survival of nonconformities since it has been determined that they are incompatible with the character of the districts involved, or to permit nonconformities to be enlarged upon, expanded, or extended . . . (38)

One final illustration of intent statements for nonconformities contains some interesting language concerning the elimination of such uses, as follows:

Statement of Purpose

It is the purpose of this Article 6 to provide for the regulation of nonconforming uses, buildings and structures and to specify those circumstances and conditions under which such uses, buildings and structures which adversely affect the development and taxable value of other property in the district in which they are located shall be gradually eliminated, in accordance with the authority granted by the statutes of the State of Illinois.

This ordinance establishes separate districts, each of which is an appropriate area for the location of the uses which are permitted in that district. It is necessary and consistent with the establishment of those districts that nonconforming uses, buildings and structures which adversely affect the development and taxable value of other property in the district not be permitted to continue indefinitely. It is logical and reasonable, and in accordance with the authority delegated by the statutes of the State of Illinois, that a time limit be placed upon the continuance of existing non-conforming uses, based upon the nature of the use; and in the case of nonconforming buildings and structures, upon their character, age and the investment involved. The adoption of a reasonable amortization program permits the owner gradually to make his plans during a period when he is allowed to continue the nonconforming use of his property, thereby minimizing his loss, while at the same time assuring the public that the district in which the nonconformity exists will eventually benefit from a uniformity of permitted uses. (39)

District Regulations

Statements of intent are most commonly found today in the district regulations portions of zoning ordinances. Such statements are used to

help clarify the objectives of the several different zoning district classifications which are provided for in the ordinance and they do so by (1) bringing into the district regulations the land development objectives expressed in the community's comprehensive plan, thereby harmonizing the ordinance and the plan in this respect, and (2) by presenting a description of the character of land development which the governing body hopes and assumes will result from the application of the detailed district regulations.

This use of intent statements in conjunction with the district regulations is particularly important because the typical zoning ordinance will very likely include three or four (or more) residential classifications, perhaps two or more commercial and industrial classifications, and one or more special purpose districts, and each of these classifications has (or should have) a definite and distinct role to play in helping to implement the community's land development plan. Statements of intent provide the place within the ordinance where these distinctions can be put in the record along with the comprehensive plan policies which should have provided the basis for the different zoning classifications in the first place.

The district regulations, moreover, lend themselves well to the idea that the systematic use of intent statements can help foster a better understanding of the purposes of each district classification. This is possible because the district classifications customarily are grouped into broad use categories (i.e., residential, commercial, and industrial) and because, within these categories, the districts usually are arranged in a sequence which begins with the most restric-

tive classification in the category and ends with the least restrictive. Thus, in the majority of zoning ordinances, a structural arrangement is already established into which a series of intent statements would fit quite logically.

The two kinds of statements of intent which should be included in the district regulations portions of the zoning ordinance are (1) the summary statements of intent and (2) the district statements of intent. As the name suggests, the summary statements are those intent statements which summarize the general objectives of the community with respect to the major categories of use (residential, commercial, and industrial) which are usually covered by regulations in the zoning ordinance. The following example illustrates the content and style of a summary statement of intent:

Commercial Districts: Certain classes of districts, designated by the primary symbol "C" and referred to collectively herein as Commercial Districts, are established to provide space in suitable locations for the many different types of business activity needed to serve the people and the industries of the City, to preserve and enhance property values and to promote economic prosperity by guiding the distribution and location of diverse types of business uses in conformance with the General Community Guide. (40)

Two things in particular should be noted about this illustration. First, its language is more precise than that found in the expression of purpose found in the ordinance preamble. The community's objectives (in this case with respect to commercial development) are made a little clearer and more specific. The second thing to note is the reference to the community's comprehensive plan and the indication that the location of commercial districts is to be in conformity with that plan.

Summary statements of intent thus are situated (both physically and in terms of their preciseness) between the ordinance preamble with its broad expression of purposes and the relatively precise intent statements which specify the objectives of the various individual districts. The use of summary intent statements makes possible the elimination of much excess verbiage from the district statements. If the general objectives of the district regulations for each of the use groups can be summarized once in the summary statement, there is no reason to express again and again in the district regulations the development objectives which are common to all of the district classifications. For example, if the governing body of the community determines (as was done in the example from the San Leandro, California, ordinance shown above) that commercial districts in that community shall be established to provide space in suitable locations for business activity and that such locations shall conform to community's comprehensive plan, it should not be necessary to express this policy again in each commercial district intent statement. This is an example of a general policy which is applicable to all of the commercial districts alike. The logical place for it is the summary statement of intent.

If this reasoning were followed, the typical zoning ordinance would include at least three such summary statements, one for each of the three main categories of use.

The district statements of intent--those used in conjunction with each individual district classification which appears in the ordinance--are the second kind of intent statement which should be employed

in the district regulations sections of the ordinance. Thus, for example, if there are four residential zoning districts in the ordinance, there should be as many intent statements. And, as noted previously, the specific objectives of each of the zoning districts should be spelled out in these statements so that there is no mistaking how each district fits into the land development policies of the community and how each district is used to help implement those policies. The following are examples of district statements of intent:

**PURPOSES (Multiple Family Residential Districts)**

The purposes of the Multiple Family Residential Districts herein called the R-4 Districts, shall be to: (1) implement Master Plan policy by encouraging development of relatively high density residential areas which are characterized by a less intense and more open type of development than is found in the High Density Residential Districts; (2) make available housing for persons who desire both convenience of location and a reasonable amount of usable open space; (3) protect adjacent properties from unreasonable obstruction of light and air; (4) permit the construction of residential structures, such as apartment hotels, hotels and motels, which will provide housing opportunities for transient or seasonal residents; (5) permit the construction of institutions and office buildings when such will not be detrimental to the immediate neighborhood. (41)

**DESCRIPTION OF DISTRICT (General Commercial District C-2)**

This district is composed of certain land and structures used to provide for the retailing of goods and the furnishing of major services such as drive-in theatres, selected trade shops and automotive repairs. Characteristically, this type of district occupies a larger area than the Local Commercial District, is intended to serve a considerably greater population and offers a wider range of specialized services. An important feature of this district, as with the Local Commercial District, is that full and complete development of all property in this District must be accomplished in order for the district to prosper and effectively serve its important economic function. These existing districts are generally located along major thoroughfares although future expansion of such districts should desirably occur as an

increase in district depth rather than as further strip-like extension along thoroughfares. (42)

#### Industrial Park (I-3) Zone

The purpose of this Industrial Park (I-3) Zone is to provide a protective Zone for a park-like development of industry that is based on the performance of an industry as well as on the type of industry. In order to secure this type of development, the various regulations herein described must be met. These regulations have been established so as to provide a healthful operating environment for industry, for the protection of industry from the encroachment of commercial and residential uses adverse to the operation and expansion of such industry, and to protect industries within the district from the adverse effect of other incompatible industries, and at the same time to reduce to a minimum the impact of industries on surrounding non-industrial land uses; to lessen traffic congestion; to protect the health and safety of the residents or workers in the area; to prevent detrimental effects to the use or development of adjacent properties or the general neighborhood; and to promote the health, safety, morals, comfort and welfare of the present and future inhabitants of the district. (43)

These illustrations, of course, do not conform in all respects to the ideal and the separation of functions between the summary statements and the district statements probably never will be as clean-cut as it seems possible to achieve. The industrial district statement illustration, for example, includes in the last phrase a reference to the health, safety, morals, comfort, and welfare purposes which, in the systematic use of intent statements, would be found in the ordinance preamble.

However, there is no doubt that anyone who reads these statements would not thereby gain at least some degree of understanding of the meaning of the complex details which follow the statement in the use, height, and area regulations of the district. Just the presence of the district intent statements is evidence that there is a signifi-



cance to most of what appears as zoning gobbledegook, a significance greater than whether a ten-foot side yard is adequate or whether a width of 12 feet would be better or whether an accessory building should be permitted nearer than 15 feet to a main building, and so on.

#### Administration and Enforcement Provisions

The fourth and final division of the zoning ordinance contains the administrative and enforcement provisions. As was the case with the General Provisions category, it is not feasible to attempt the formulation of a statement of intent which would cover this entire category. The provisions included in the grouping simply are too varied.

Only one statement of intent is usually found in conjunction with these provisions. It is the traditional one which sets forth the duties of the various officials involved in the administration of the ordinance. Typically, it reads as follows:

##### Duties of Building Inspector, Board of Appeals, City Council and Courts on Matters of Appeal

It is the intent of this Ordinance that all questions arising in connection with the enforcement or the interpretation of this Ordinance (except as otherwise expressly provided in this Ordinance) shall be first presented to the Building Inspector and that such questions shall be presented to the Board of Appeals only on appeal from the Building Inspector, and that from the decisions of the Board of Appeals, recourse shall be taken to the courts as provided by law.

It is further the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and passing on disputed questions which might arise in connection with the enforcement or interpretation of this Ordinance, but the procedures for determining such questions

shall be as stated in this Ordinance, and that the duties of the City Council in connection with this Ordinance shall be only the duty of holding a public hearing and voting upon any proposed amendment or repeal of this Ordinance, as provided by law. (44)

#### Conclusion

It is evident from the foregoing paragraphs that statements of intent can perform valuable functions in the zoning process. In particular, the systematic use of such statements in conjunction with the use, height, and area requirements of the district regulations offers to zoning practitioners the means whereby their activities can assume a consistency and an atmosphere of logic heretofore rarely achieved.

## A P P E N D I X

## APPENDIX A

## DETAILS OF ZONING ORDINANCE SURVEY

## Regional Summary

Region*	ZONING ORDINANCES IN SURVEY		S T A T E S		
	Total	Containing Statements of Intent	Number in Region	Number in Survey	With Intent Statements in Zoning Ordinances
New England	35	3	6	6	1
Middle Atlantic	44	7	3	3	3
North Central	46	20	12	10	7
South Atlantic	78	25	8**	7**	6**
South Central	40	9	8	8	2
Mountain and Pacific	54	15	11	9	3
Alaska and Hawaii	6	2	2	2	1
TOTAL	303	81	50	45	23

\* See following pages for states in the various Regions.

\*\* Including the District of Columbia.

## DETAILS OF ZONING ORDINANCE SURVEY (CONTINUED)

## State Summaries, By Region

Region	Zoning Ordinances in Survey	Ordinances Containing Statements of Intent
<u>New England</u>		
Maine	1	0
New Hampshire	1	0
Vermont	3	0
Massachusetts	4	0
Rhode Island	3	0
Connecticut	23	3
Total	35	3
<u>Middle Atlantic</u>		
New York	13	3
New Jersey	16	1
Pennsylvania	15	3
Total	44	7
<u>North Central</u>		
Ohio	10	3
Indiana	5	1
Illinois	13	10
Michigan	6	3
Wisconsin	2	0
Minnesota	3	1
Iowa	0	0
Missouri	2	1
North Dakota	1	1
South Dakota	3	0
Nebraska	1	0
Kansas	0	0
Total	46	20
<u>South Atlantic</u>		
Delaware	0	0
Maryland	2	2
District of Columbia	1	1
Virginia	7	2
West Virginia	1	0
North Carolina	16	4
South Carolina	5	2
Georgia	17	9
Florida	29	5
Total	78	25

## DETAILS OF ZONING ORDINANCE SURVEY (CONTINUED)

## State Summaries, By Region (Continued)

Region	Zoning Ordinances in Survey	Ordinances Containing Statements of Intent
<u>South Central</u>		
Kentucky	2	0
Tennessee	18	6
Alabama	5	0
Mississippi	2	0
Arkansas	5	3
Louisiana	2	0
Oklahoma	3	0
Texas	3	0
Total	<u>40</u>	<u>9</u>
<u>Mountain and Pacific</u>		
Montana	1	0
Idaho	1	0
Wyoming	0	0
Colorado	10	0
New Mexico	2	0
Arizona	4	1
Utah	1	1
Nevada	0	0
Washington	1	1
Oregon	4	0
California	30	12
Total	<u>54</u>	<u>15</u>
<u>Alaska</u>	1	0
<u>Hawaii</u>	5	2

## DETAILS OF ZONING ORDINANCE SURVEY (CONTINUED)

## Dates of Zoning Ordinances in Survey

Dates of Ordinances	ORDINANCES IN SURVEY		
	Total	With Statements of Intent	Without Statements of Intent
1960 or Later	91	37	54
1955-1959	72	30	42
1950-1954	79	8	71
Prior to 1950	46	1	45
Date Unknown	15	5	10
Total	303	81	222

## B I B L I O G R A P H Y



## LIST OF ABBREVIATIONS

A. 2d	Atlantic Reporter, Second Series
Cal. Rptr.	California Reporter
N. C.	North Carolina Reports
N. J.	New Jersey Reports
P. 2d	Pacific Reporter, Second Series
S.E. 2d	Southeastern Reporter, Second Series

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