

INTERNAL MEMORANDUM / FOR INTERNAL USE ONLY

Glazebrook v. Board of Supervisors, 266 Va. 550, 587 S.E.2d 589 (2003)

. . . publications did not provide an adequate "descriptive summary," the amendments were void *ab initio*. The judgment is reversed and the case is remanded.

 <p>INTERNAL MEMORANDUM For Internal Use Only</p>	<p>The Unalienable Rights Foundation P.O. Box 65002 Virginia Beach, Virginia 23467-5002 Telephone 757-818-8003 Fax 757.282.2424 E-Mail UnalienableRights@uarf.us</p>	
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Glazebrook v. Board of Supervisors, 266 Va. 550, 587 S.E.2d 589 (2003)

IN THE SUPREME COURT OF VIRGINIA

**RAYNOLD C. GLAZEBROOK, JR.,
TRUSTEE, ET AL.**

v.

**BOARD OF SUPERVISORS OF
SPOTSYLVANIA COUNTY**

Record No. 022937

Decided: October 31, 2003

Present: All the Justices

1 **The trial court erred in sustaining a county's demurrer in**
2 **a suit seeking to invalidate certain zoning ordinance**
3 **amendments for failure to provide adequate published**
4 **notice describing the nature of the proposals to be**

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5 **considered. Since the publications did not provide an**
6 **adequate “descriptive summary,” the amendments were**
7 **void *ab initio*. The judgment is reversed and the case is**
8 **remanded.**

9 **Cities, Counties and Towns – Ordinances – Amendments**
10 **– Public Notice Requirement – Descriptive Summaries of**
11 **Proposed Amendments – Statutory Construction (Code §**
12 **15.2-2204) – Practice and Procedure – Demurrers**

13 **The plaintiff property owner brought this suit challenging**
14 **as void *ab initio* certain amendments to the county zoning**
15 **ordinance affecting the potential development of his land.**
16 **The county had advertised scheduled hearings to consider**
17 **amendments to the zoning ordinance, using the text of public**

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18 **notices which stated the date, time and location of the**
19 **hearings, listed the ordinance section numbers and titles, and**
20 **stated that the proposed amendments would affect**
21 **“development standards.” The published notices referred**
22 **readers to a location where the full text of amendment**
23 **proposals could be inspected. The notices stated that the**
24 **proposals to be considered would amend “development**
25 **standards for the agricultural 1(A-1) district.” Plaintiff**
26 **challenged the adequacy of the published notice of the**
27 **proposed amendments. The trial court sustained the**
28 **defendant county's demurrer, and this appeal followed.**

29 1. A demurrer tests the legal sufficiency of facts alleged in pleadings,
30 not the strength of proof. All facts properly pleaded in the bill of
31 complaint are accepted as true, and all reasonable and fair

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32 inferences that may be drawn from those facts are considered.

33 2. Because appellate review of the sustaining of a demurrer involves
34 a matter of law, the trial court's judgment is reviewed *de novo*.

35 3. Code § 15.2-2204(A) provides that plans, ordinances or
36 amendments need not be advertised in full, but may be advertised
37 by reference. Every such advertisement must contain a *descriptive*
38 *summary* of the proposed action and a reference to the place or
39 places within the locality where copies of the proposed plans,
40 ordinances or amendments may be examined. [Page 551]

41 4. If the notice published by the county did not meet the
42 requirements of Code § 15.2-2204, the county acted outside the
43 authority granted by the General Assembly and the amendments are

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44 void *ab initio*.

45 5. The word “descriptive” in this statute modifies the word
46 “summary.” “Descriptive” means “serving to describe.”
47 “Describe” means “to represent by words written or spoken
48 for the knowledge or understanding of others.” A summary
49 covers the main points concisely but lacks detailed
50 explanation. Thus, a “descriptive summary” is a statement
51 that covers the main points concisely, but without detailed
52 explanation, in a manner that serves to describe an object for
53 the knowledge and understanding of others.

54 6. This literal definition of the phrase establishes the
55 foundation for interpretation of what satisfies the
56 requirements of Code § 15.2-2204(A). If the notice does not

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57 **cover the main points of the proposed amendment and does**
58 **not accurately describe the proposed amendment, it does not**
59 **satisfy Code § 15.2-2204(A). However, the notice need not**
60 **contain the full text of the proposed amendment, nor explain**
61 **the proposed amendment in detail.**

62 7. Other language of Code § 15.2-2204(A) requires that the notice
63 published by a locality specify the time and place of hearing at which
64 persons affected may appear and present their views, suggesting
65 that the intent of the statute is to generate informed public
66 participation by providing citizens with information about the content
67 of the proposed amendments and the forum for debate concerning
68 those amendments.

69 **8. There is no indication that the General Assembly expected**

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70 **affected citizens to engage in legal research in order to**
71 **decide whether to participate in the hearing or to decide what**
72 **their interests may be in a proposed amendment.**

73 **9. Case law interpreting a former Code section that required**
74 **publication of an “informative summary” of proposed**
75 **annexations held that it was designed to supply those who**
76 **may be affected thereby, or interested therein, with certain**
77 **information from which they may determine whether or not**
78 **to act in support of or against the proposal.**

79 **10. Prior to 1992, Code § 15.2-2204(A) did not require the**
80 **notice published by the locality to contain a “descriptive**
81 **summary” or a summary of any kind. In 1992, the General**
82 **Assembly inserted the “descriptive summary” requirement.**

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83 **This change suggests that it is not enough to provide**
84 **information that will merely direct readers to the physical**
85 **location of the actual text of the proposed amendments. The**
86 **“descriptive summary” requirement goes beyond referral to**
87 **the primary document.**

88 **11. In the present case, the notice merely stated that the**
89 **“development standards” for the specified zoning districts in**
90 **question would be amended. “Development standards,” as**
91 **the phrase is used in the ordinance, is a heading within which**
92 **are a number of subheadings describing specific regulations.**
93 **In other words, “development standards” is the umbrella title**
94 **for regulations including minimum road frontage, residential**
95 **and non-residential densities, lot areas for various uses,**
96 **minimum lot width, and maximum height of structures on the**

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97 **land. [Page 552]**

98 12. The notice published by the county in this case did not contain
99 a sufficiently descriptive summary of the proposed amendments to
100 the zoning ordinances. No citizen could reasonably determine, from
101 the notice, whether he or she was affected by the proposed
102 amendments except in the most general sense of being located in a
103 particular type of zoning district. Nor could a citizen determine
104 whether the proposed amendments affected zoning issues that were
105 of interest or concern to the citizen. Given the number of issues
106 subsumed under the heading “development standards,” using that
107 heading as a descriptive summary fails to narrow the universe of
108 possible zoning ordinance amendments in any meaningful way.

109 13. Both the evolution of the statute and the treatment of analogous

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110 statutes illustrate that such a notice is inadequate under Code §
111 15.2-2204(A).

112 **14. Because the notice was inadequate in failing to provide a**
113 **“descriptive summary,” the county board acted outside the**
114 **powers granted to it and, consequently, the zoning**
115 **ordinances passed pursuant to the notices at issue in this**
116 **case are void *ab initio*.**

117 Appeal from a judgment of the Circuit Court of Spotsylvania
118 County. Hon. William H. Ledbetter, Jr., judge presiding.
119 [Ledbetter’s homecooking overtuned?]

120 *Reversed and remanded.*

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121 John H. Foote (Wendy Alexander; H. Clark Leming; John E.
122 Tyler, Jr.; Walsh, Colucci, Lubeley, Emrich & Terpak; Leming and
123 Healy, on briefs), for appellants.

124 Randall T. Greehan (Mark B. Taylor, County Attorney; Jeffrey
125 A. Huber; T. David Stoner; Scott D. Helsel; Walton & Adams, on
126 brief), for appellee.

127 JUSTICE LEMONS delivered the opinion of the Court.

128 In this appeal, we consider whether the Board of Supervisors
129 for Spotsylvania County (“the Board”) provided adequate notice
130 pursuant to Code § 15.2-2204(A) prior to holding a hearing and
131 voting on text amendments to the County's zoning ordinances.

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132 I. Facts and Proceedings

133 In response to the perceived threat to the infrastructure of
134 Spotsylvania County posed by rapid growth, the Board scheduled
135 hearings for February 6 and 12, 2002 to amend the County's
136 zoning ordinances.¹ The advertisements stated the time, date,
137 and location of the [Page 553] hearing. They also listed the zoning
138 districts to be affected, the zoning ordinance section numbers and
139 titles, and stated that the hearing would affect “development
140 standards.” A reference to the location of the full text of the
141 amendment proposals was also included. Of importance to the
142 case before us, the published notices contained the following:

143 **Amendment(s)**

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144 **02-A Board of Supervisors:** Amendments to Chapter
145 23, Zoning, Article 6, Zoning Districts, of the Code of the
146 County of Spotsylvania, as follows:

147 **Section 23-6.2.4. Development standards.** Amend
148 development standards for the agricultural 1(A-1) district.

149 Chapter 23, Article 6, Division 2, subparagraph 4 (§ 23-6.2.4 of
150 the Code of the County of Spotsylvania) is entitled “Development
151 standards” and encompasses regulations addressing maximum
152 density, road frontage, open space requirements, minimum lot
153 requirements, and other characteristics. On February 12, 2002,
154 the Board voted to amend these “development standards.”

155 Raynold C. Glazebrook and Realco-Route 3, L.L.C. (collectively,

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156 “Glazebrook”), along with a number of parties not before us at
157 this time, brought suit against the Board on multiple grounds
158 including a claim that the Board had failed to publish adequate
159 notice of its proposed amendments as required by Code § 15.2-
160 2204(A). The Board demurred and the trial court sustained the
161 Board's demurrer on all but two counts, which did not apply to
162 Glazebrook. On appeal, Glazebrook's two assignments of error
163 challenge the sustaining of the demurrer and encompass only one
164 issue. Glazebrook maintains that the publication in the
165 Fredericksburg Free Lance-Star provided insufficient notice in
166 violation of Code § 15.2-2204(A). Glazebrook asserts that the
167 Board's notice that it would “[a]mend development standards” for
168 the named zoning districts was not specific enough to satisfy the
169 requirement that the Board publish a “descriptive summary” of
170 the action it planned to consider at its hearing. Because of the

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171 defect in notice, Glazebrook argues that the ordinance is void *ab*
172 *initio*. [Page 554]

173 II. Standard of Review

174 [1-2] A demurrer tests the legal sufficiency of facts alleged in
175 pleadings, not the strength of proof. We accept as true all facts
176 properly pleaded in the bill of complaint and all reasonable and
177 fair inferences that may be drawn from those facts. *W.S. Carnes,*
178 *Inc. v. Board of Supervisors*, 252 Va. 377, 384, 478 S.E.2d 295,
179 300 (1996); *Burns v. Board of Supervisors*, 218 Va. 625, 627, 238
180 S.E.2d 823, 824-25 (1977); *Chippenham Manor, Inc. v.*
181 *Dervishian*, 214 Va. 448, 450, 201 S.E.2d 794, 796 (1974).

182 Because appellate review of the sustaining of a demurrer involves
183 a matter of law, we review the trial court's judgment *de novo*.

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184

III. Analysis

185

[3-4] The heart of this controversy is the meaning of the

186

phrase “descriptive summary” in Code § 15.2-2204(A) which

187

provides:

188

Plans or ordinances, or amendments thereof, recommended

189

or adopted under the powers conferred by this chapter need

190

not be advertised in full, but may be advertised by reference.

191

Every such advertisement shall contain a *descriptive*

192

summary of the proposed action and a reference to the place

193

or places within the locality where copies of the proposed

194

plans, ordinances or amendments may be examined.

195

(emphasis added). If the notice published by the Board did not

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196 meet the requirements of Code § 15.2-2204, the Board acted
197 outside the authority granted by the General Assembly and the
198 amendments are void *ab initio*. See *City Council of the City of*
199 *Alexandria v. Potomac Greens Assoc.*, 245 Va. 371, 378, 429
200 S.E.2d 224, 228 (1993) (failure to give required notices rendered
201 an ordinance “void *ab initio*”).

202 A. Definition of “Descriptive Summary”

203 [5] Parsing the phrase “descriptive summary” into its
204 component parts, the word “descriptive” modifies the word
205 “summary.” “Descriptive” means “serving to describe.” “Describe”
206 means “to represent by words written or spoken for the
207 knowledge or understanding of others.” *Webster's Third New*
208 *International Dictionary* 610 (1993). A summary “cover[s] the

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209 main points concisely” but “lack[s] detailed explanation.” *Id.* at
210 2289. Thus, a “descriptive summary” is a statement that covers
211 the main points concisely, but [Page 555] without detailed
212 explanation, in a manner that serves to describe an object for the
213 knowledge and understanding of others.

214 [6] This literal definition of the phrase establishes the
215 foundation for interpretation of what satisfies the requirements of
216 Code § 15.2-2204(A). If the notice does not cover the main points
217 of the proposed amendment and does not accurately describe the
218 proposed amendment, it does not satisfy Code § 15.2-2204(A).
219 However, the notice need not contain the full text of the proposed
220 amendment, nor explain the proposed amendment in detail.

221 [7-8] Other language of Code § 15.2-2204(A) requires that the

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222 notice published by a locality “specify the time and place of
223 hearing at which persons affected may appear and present their
224 views.” Code § 15.2-2204(A). This language suggests that the
225 intent of the statute is to generate informed public participation
226 by providing citizens with information about the content of the
227 proposed amendments and the forum for debate concerning those
228 amendments. There is no indication that the General Assembly
229 expected affected citizens to engage in legal research in order to
230 decide whether to participate in the hearing or to decide what
231 their interests may be in a proposed amendment. *See also*
232 *Lawrence Transfer & Storage Corp. v. Board of Zoning Appeals of*
233 *Augusta*, 229 Va. 568, 571, 331 S.E.2d 460, 462 (1985)
234 (determining that the intent of subsection B of the statute
235 replaced by Code § 15.2-2204 was “to afford property owners
236 who are closest to the land involved an opportunity to be heard by

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237 the Board.”).

238 [9] In *City of Portsmouth v. County of Suffolk*, 198 Va. 247,
239 251, 93 S.E.2d 296, 300-01 (1956), we held that former Code §
240 15.1-152.5, requiring publication of an “informative summary” of
241 proposed annexations, was designed to “supply those who may be
242 affected thereby, or interested therein, with certain information
243 from which they may determine whether or not to act in support
244 of or against the proposed annexation.”² Although it involves a
245 different portion of the Code, the opinion expresses the same
246 concerns that drive the need for adequate public notice in the
247 zoning context. We have previously stated that, as a whole,
248 Virginia's zoning statutes are designed to prevent zoning changes
249 from being made “suddenly, arbitrarily, or capriciously.” *Bd. of*
250 *Supervisors of Fairfax County v. [Page 556] Snell Construction*

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251 *Corp.*, 214 Va. 655, 658, 202 S.E.2d 889, 892 (1974).

252 [10] The history of Code § 15.2-2204(A) adds further
253 illumination. Prior to 1992, the statute did not require the notice
254 published by the locality to contain a “descriptive summary” or a
255 summary of any kind. In 1992, the General Assembly inserted the
256 “descriptive summary” requirement. Acts 1992 ch. 757. This
257 change by the General Assembly suggests that it is not enough to
258 provide information that will merely direct readers to the physical
259 location of the actual text of the proposed amendments. The
260 “descriptive summary” requirement goes beyond referral to the
261 primary document.

262 **B. The Notice**

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263 [11] We must determine whether the notice published by the
264 Board in the Fredericksburg Free Lance-Star contained a
265 “descriptive summary” as required in Code § 15.2-2204(A). The
266 notice merely stated that the “development standards” for the
267 specified zoning districts in question would be amended.
268 “Development standards,” as the phrase is used in the ordinance,
269 is a heading within which are a number of subheadings describing
270 specific regulations. In other words, “development standards” is
271 the umbrella title for regulations including minimum road
272 frontage, residential and non-residential densities, lot areas for
273 various uses, minimum lot width, and maximum height of
274 structures on the land.

275 [12-13] We hold that the notice published by the Board did not
276 contain a sufficiently descriptive summary of the proposed

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277 amendments to the Spotsylvania County zoning ordinances. No
278 citizen could reasonably determine, from the notice, whether he
279 or she was affected by the proposed amendments except in the
280 most general sense of being located in a particular type of zoning
281 district. Nor could a citizen determine whether the proposed
282 amendments affected zoning issues that were of interest or
283 concern to the citizen. Given the number of issues subsumed
284 under the heading “development standards,” using that heading
285 as a descriptive summary fails to inform citizens of the universe of
286 possible zoning ordinance amendments in any meaningful way.
287 Both the evolution of the statute and the treatment of analogous
288 statutes illustrate that such a notice is inadequate under Code §
289 15.2-2204(A).

290 [14] We do not, in this opinion, attempt to dictate the exact

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291 language of future notices, nor do we seek to establish a bright
292 line rule. However, considering the intent and language of the
293 statute, the [Page 557] notice in this case was inadequate.
294 Because the notice was inadequate in failing to provide a
295 “descriptive summary,” the Board acted outside the powers
296 granted to it. See Code § 15.2-2204; *Potomac Greens Assoc.*, 245
297 Va. at 378, 429 S.E.2d at 228. Consequently, the zoning
298 ordinances passed pursuant to the notices published on January
299 23, January 30, and February 6, 2002 and at issue in this case are
300 void *ab initio*.

301 IV. Conclusion

302 For these reasons, we reverse the judgment of the trial court
303 and remand for further proceedings consistent with this opinion.

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Reversed and remanded.

FOOTNOTES

¹ The Board published advertisements in the Fredericksburg Free Lance-Star on January 23, 2002 and January 30, 2002 for the hearing on February 6, 2002. The Board published advertisements in the same newspaper on January 30, 2002 and February 6, 2002 for the hearing on February 12, 2002.

² The General Assembly has since changed the language to require a “descriptive summary” of the annexation ordinance. Code § 15.2-3204. The motivation for the change is not clear and the two phrases are not, on their faces, significantly different.

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