

Draft
(12/13/11)

Natural Landscaping or Blight?

By Clifford H. Bloom
Law Weathers

Everyone is familiar with the phrase “one person’s trash is another person’s treasure.” And, in fact, many townships throughout Michigan have long had many blight, noxious weeds, and similar regulatory ordinances that impact both “treasure” and “trash.”

In this era of increasing environmental enlightenment, however, some of those ordinances are standing in the way of the protection of our natural resources. How? For example, the Michigan Department of Natural Resources and the Environment (“MDNRE”) (through the Michigan Natural Shoreline Partnership), state environmental groups, and others have promoted the use of natural buffer strips or areas along the banks and shorelines of Michigan lakes, streams, and rivers. Similar groups have promoted the idea of rain gardens and natural and native vegetation for both commercial and residential yards. Yet in many cases, such techniques run afoul of local township ordinance prohibitions. In most cases, officials of the township involved never considered the impact that blight, noxious weed, or similar ordinances might have on natural resource preservation techniques such as buffer strips, rain gardens, natural landscaping, and bioengineered shorelines.

Township blight ordinances typically use broad language to prohibit nuisances and unsightly conditions. For example, township noxious weed ordinances frequently prohibit grasses, weeds, and other foliage from exceeding a certain height (for example, six inches). Almost by definition, natural buffer areas along Michigan lakes, streams, and rivers, rain gardens, and wetlands contain grasses, foliage, and what some people consider to be “weeds” that exceed the normal height of grass on a manicured lawn. Some members of the community might deem the plantings in these buffer areas to be “unsightly” or a “nuisance.” Given the

standard blight, noxious weed, and similar local ordinances on the books, a person could actually be prosecuted for using some of the nature-preserving techniques being advocated by the MDNRE, local environmental groups, and other organizations.

Interestingly, a township's own zoning ordinance is sometimes actually at odds with the same township's blight or noxious weeds ordinance in particular cases. For example, the zoning ordinance may promote (or even require) that a natural buffer strip be maintained within a certain distance of the shoreline of a lake, stream, or river. Or, a site plan approved pursuant to a variance, special land use, or planned unit development may require the use of a natural vegetative strip, rain garden, or similar item. However, if that same township's blight ordinance prohibits nuisances or unsightly weeds, or its noxious weed ordinance requires that all grasses, weeds, and other foliage be cut and kept below a certain height, the ordinance and site plan approval process could be at odds.

Is there an "easy fix" to this problem? Yes. The following language could be added to most townships' blight, noxious weed, or similar ordinances:

Notwithstanding the regulations in this Section _____, the following is permitted within thirty (30) feet of the ordinary high water mark of any lake, stream, river, or wetlands or if approved as part of a variance, site plan, planned unit development, special use, or similar township zoning approval:

1. Leaving natural vegetation untouched and intact.
2. The growth of natural vegetation (including, but not limited to, grass, vines, bushes, weeds, trees, shrubs and foliage), regardless of height.
3. Planting and growth of native Michigan plants, grasses, bushes and trees.

Of course, prior to amending any of your municipality's relevant ordinances, you should consult with your municipal attorney.

For more information regarding natural buffer strips along shorelines, rain gardens, and similar environmentally-friendly natural areas, please consult the following:

- The Michigan Townships Association website at www.michigantownships.org.
- The Michigan Lake & Stream Associations, Inc. website at www.mlswa.org.
- The Michigan Natural Shoreline Partnership website at www.mishorelinepartnership.org