LEGAL CONTROLS FOR UNDESIRABLE VEGETATION

by Mark Widrlechner

This report describes some of the multitude of legal devices used to control undesirable vegetation, including both common law and statutory remedies. During the course of this discussion many of the land use problems caused by vegetation are enumerated. Vegetation is ubiquitous; only in the most extreme environments is it lacking. The problems it can cause to land-owners are almost as varied as the number of plant species, and vary greatly with land use.

Due to the breadth of this topic, certain areas will not be discussed because they have been thoroughly covered elsewhere. Some of these include: the cultivation of controlled substances (1), problems concerning attractive nuisances (2) and interference with solar rights (3).

Common Law Doctrines

Common law doctrines associated with vegetation control are at least as broad in their applicability as statutory remedies based on the police power, but are less commonly applied. The common law doctrines which do have some applicability to cases regarding vegetation are waste law, nuisance law, and trespass law. Of these, waste law is the most limited in scope.

The doctrine of waste allows the owner of the title of real property to have a cause of action requesting damages and abrogation of tenancy in cases where the present possessor of that property allows it to become physically damaged (4). In England, waste doctrine developed prior to 1200 to protect title owners from the actions of tenants of estates created by the court and has been broadened over time to include other relationships between title owner and possessor (5).

Damages are most likely to be granted in cases of active waste, where a possessor or lessee actively destroys the property of the title owner. In cases involving agricultural lands, the opinion of Hutton v. Warren 1 M&W 466 noted that active waste might be construed more broadly if there existed an implied contract from the custom of the country with regard to cultivated land being left to disrepair.

There are a few United States cases which show that some states hold this custom, explicitly described in Anderson v. Hannon 24 P 228 (1890). One of the first is Clemence v. Steere 1 RI 272 (1850), where the Rhode Island Supreme Court ruled that common law causes the forfeiture of the estate wasted by the life tenant, and also ruled that pasture allowed to be overgrown with brush, beyond what a prudent man would allow, is waste. In more recent cases, courts have upheld the doctrine and have expanded it to allow for compensatory damages based on the dimunition of the property's market value because of noxious weed growth (6), from removal of trees (7), and from deterioration of citrus orchards (8).

Standing for actions based on waste is very limited, but nuisance cases have broader standing. In nuisance cases, the aggrieved party only is required to show some property damage or disturbance from the activities or negligence of another party. For a recent discussion of the changing rules controlling common law nuisances, consult Coquillette, Mosses from an Old Manse: Another Look at some Historic Property Cases about the Environment, 64 Corn.L.Rev. 761 (1979). However, there is a unique problem limiting the applicability of common law nuisance doctrine. Many courts have ruled that common law nuisances cannot arise from the land in its natural condition and that a possessor would not then be obligated to alter undesirable vegetation (9). In Rylands v. Fletcher L.R. 8 H.L. 330 (1868), the court even extended the concept of natural condition to include land in ordinary uses (10), but the opinion in Preston v. Schrenk 295 P2D 272 (1956) restricted that definition somewhat, by including agricultural land only when cultivated following long-standing local practices (11). In many urban settings, it would not be difficult to demonstrate that the vegetation did not arise from the land in its natural condition, but nuisance vegetation litigation from the urban setting is primarily based on statute and the police power.

The most appropriate common law doctrine for the handling of civil undesirable vegetation disputes is the doctrine of trespass (12). However, such litigation with the decision based on trespass doctrine is rare. Pollen, seeds, roots, leaves, etc. can travel from one property owner to another and cause damage (13). The owner of the disruptive vegetation, once aware of the situation (14), would be liable of trespass if corrective measures were not taken, within certain limitations; that there be tangible consequences of intrusion (15) and there be an intentional act or the result of recklessness, negligence, or extrahazardous activities (16). If the trespass were of a continuing nature, an injunction could be served or punitive damages might be justified, especially if compensatory damages might not deter similar trespasses in the future (17).

A successful use of trespass doctrine to control destructive vegetation was in the case of Stojan v. Krawczyk 24 Peaver 197 (1962). This case involved adjoining landowners, and it was ruled that certain trees and shrubs planted and maintained by the defendant had, by root and stem, trespassed upon the plaintiff's land, and were ruining a retaining wall. The facts of the case are similar to some unsuccessful nuisance cases, except that this was not a case of land in its natural condition, as defined above. However, there is nothing in trespass doctrine limiting the source of intrusion to the result of unnatural activities (18, 19).

Statutory Controls

Because of the reasons enumerated above, common law doctrines fall far short of providing the sort of vegetation restrictions that are needed in an agricultural or urban society. Therefore, many states and units of local government have enacted statutes controlling the nature of vegetation under the mantle of protecting the health, safety, and general welfare of the inhabitants (20).

The courts, through review, have traditionally given a strong presumption of validity to such legislative acts. There may be two reasons for this. The courts have not found these regulations to infringe upon fundamental rights, which might demand a weaker presumption of validity; nor have the courts desired to handle the technical problems that would arise in the creation of court-made, reasonable alternatives to invalidated statutes. The results of such inability on the part of the courts to give close scrutiny to statutes and ordinances, which attempt to deal with such a complex problem, have a predictable end. The following outline of statutes and adjucation will show the broad extent of the power which has been given the legislative and administrative functions of government to declare and abate vegetation "nuisances."

Health

Urban vegetation control cases have often been enacted for reasons of public health. The justification for such ordinances are varied and have generally not come under close judicial scrutiny. One such case, which has been widely cited, is City of St. Louis vs. Galt 77 SW 876 (1903). In that case, the court ruled that "if the object to be accomplished is conducive to ***public health*** the courts will accord to the city a liberal discretion both as to the ends sought and to the means employed" (at 879). The court then went on to state that decaying vegetable matter produces malaria, and thus a 1' height limit on weeds is reasonable.

A closer relationship to malaria, although not explicitly stated, can be found in Green v. Mayor of Savannah 6 Ga. 1 (1849) and Town of Summerville v. Pressley 11 SE 545 (1890), where city ordinances that banned rice cultivation were upheld. The Summerville, S.C. ordinance also limited property owners to 1/8 acre for agricultural use. On a challenge, the court ruled that the ordinance didn't amount to a taking, although the defendant's land was well suited for agriculture and had been cultivated for over thirty years. However, this case is prior to Justice Holmes' decision in Pennsylvania Coal Co. v. Mahon 820 US 398 (1922); and if the defendant could show how his land could not be used in another productive fashion, the case may have gone differently after 1922.

A more recent case also follows the health hazard concept. In the case of Pope v. City of Houston 559 SW2d 905 (1977), the City Director of Public Health could abate nuisances caused

by waste, brush, rubbish, etc. after proper notice. The court noted (at 908) that "it is a matter of common knowledge that a vacant lot that is allowed to accumulate weeds, brush, and/or rubbish may well constitute a health hazard nuisance for reasons that it may * * * harbor rodents, mosquitoes, wild or rabid animals * * *."

Health considerations enter more directly into the control of the plant species that pose a direct human health hazard. Acts controlling plants causing dermatitis (21) or plants with pollen causing allergic reactions (22) have generally been accepted without litigation.

Safety

Safety considerations are also used to give justification to vegetation control laws. The two areas of special concern are fire control and obstructions to visibility along roads and railroads. Many states have special fire control statutes dealing with vegetation. Most are directed toward railroads and the special fire hazards they cause (23). They generally require the clearing of right-of-way during specific seasons.

In California where fire damage has been severe, city ordinances often refer to the presence of dry weeds as a fire menace. One detailed case where such an ordinance was unsuccessfully challenged, Thain v. City of Palo Alto 24 Cal.P. 515 (1962), is an example where the court refused to rule on a lack of standards for the property owner because of a presumption of validity (24). In this case, the owner of an abandoned orchard found no significant weeds on his property, but he received an assessment for $64.48 for weed removal costs. It became obvious that he did not realize that herbicide spraying done by the city was the cause of the lack of weed development. One must wonder, with the increasing evidence of problems associated with the use of many herbicides (25), if a court might not now recognize the need for actual, as opposed to constructive, notice and for an ample opportunity for the property owner to abate the problem in a manner more in accord with personal conscience.

Road and railroad visibility obstruction control, by state statute, is also widespread (26) and attempts have been made to apply vegetation control statutes in the determination of contributory negligence in accident cases, with mixed results. Only in a few cases (27) has it been possible to show contributory negligence on the part of a railroad in train-vehicle collisions with regard to vegetation control, statutory support notwithstanding. This has generally been due to a lack of undisputed evidence of the violation's existence (28).

A road obstruction case in Arizona shows another interesting point of law. In Hidalgo v. Cochise Co. 474 P2d 34 (1970), the plaintiff sued for personal injuries stemming from a vehicle collusion at a county road intersection where the view was blocked by Johnson grass. The plaintiff claimed that the county was in violation of a state statute declaring Johnson grass to be a nuisance, and thus was guilty of negligence. However, the court ruled that, for a case of negligence, the plaintiffs must demonstrate that they are in a class meant to be protected by the statute violated (29). In this case, the statute was enacted to protect agricultural interests and not motorists.

General Welfare

The most nebulous justification for vegetation control is that of the promotion of general welfare. For the purposes of this paper, that can be limited to protection of agricultural and forestry interests, protection of property values, and aesthetic considerations. Nearly all states have statutes to control the dissemination of plant diseases. These statutes are generally quite powerful, allowing for the destruction of plants and the creation of quarantines. The statutes fall into three classes; one group declares specific diseases to be nuisances and calls for the destruction of diseased plants or alternate hosts of the disease; the second group confers broad powers to an administrative agency to discover and control plant diseases in general; the third class is local enabling legislation for the creation of special disease control districts.

Some of the more common subjects for specific statutory control are currants, for the control of white pine blister rust (31), barberries, for the control of stem rust of wheat (32), and elms, for

the control of Dutch elm disease (33). The courts have upheld such specific control (34, 35), and in Bowman v. State Entomologist 105 SE 141, 12 ALR 1136 (1920), the court presented a general justification for all three classes of disease control legislation. The court ruled that the public demand for wholesome food justified the destruction of cedar trees that could infect apple orchards with rust, even if only orchard owners were being directly protected. The same sort of statement could be extended with little dimunition of force to timber and other plant products.

The delegation of authority in the second class of statutes has been to a variety of agencies and individuals. Most common is delegation to a Commissioner or Director of the state's department of agriculture (36), but the authority is given to a quasi-public board in Arkansas (37), and to the Governor, to call for quarantines, in Montana (38). As in the Bowman case above, the courts have upheld the determinations of these agencies (39).

A variety of mechanisms have been set up by some states (30), to provide for special disease control districts, when a threat exists. They generally require a good deal of local support for their existence. Similar special districts are also used to control noxious weed problems, infra.

Certain plant species, because of their ability to invade disturbed sites and to compete with crops, have been singled out as noxious weeds by state legislatures (41). In other situations, states have often granted powers similar to the second and third cases of disease control legislation, supra (42). The administrative actions permitted by such legislation for the control of noxious weeds are usually similar to the broad powers granted in disease control. In certain states, the legislatures have gone further to require special weed control by railroads, highways, and utilities due to the unusual qualities of their effects on adjoining landowners (43). Special weed control districts have also been set up and occasionally distinct taxing power may be granted to carry out weed control (44).

Litigation over the validity of noxious weed control has essentially been parallel to disease control cases (45). The only unique point to contest was that of equal protection, in cases where railroads were singled out for weed control. That point was litigated in many states, but the U.S. Supreme Court decisions in Chicago, Terre Haute & Southeastern Ry. Co. v. Anderson 242 US 283 (1916) and Missouri, Kansas & Texas Ry. Co. v. May 194 US 267 (1904) have been found controlling. These cases were among the first to show that legislation will not be disturbed unless the classification is manifestly arbitrary and unreasonable. The court then explained why it is reasonable to single out railroads, because of their ability to carelessly spread noxious weeds across the agricultural landscape (46).

The other main interpretations of general welfare: protection of property values and aesthetic considerations, can be combined for the purpose of discussion. The two have been closely linked by the courts, especially in cases dealing with land use regulation. A federal court, in Marrs v. City of Oxford 24 F2d 541 (1928), found the stabilization and protection of property values to be the soundest reason to support zoning ordinances. And the Wisconsin Supreme Court, in State ex rel. Saveland Park Holding Co. v. Wieland 69 NW2d 217 (1955), overruled the trial court and declared that "the protection of property values is an objective which falls within the exercise of the police power to promote the "general welfare" *** "In supporting a city ordinance creating a board of review for the architectural design of new structures.

It is obvious that the nature of vegetation on an urban lot can influence the property values of adjacent landowners and that vegetation can also vary widely in aesthetic quality. But it is difficult to judge either the influence on value or the aesthetic qualities. Thick, overgrown vegetation where there is dense, single-family residential development would probably decrease property values; while in industrial areas or in large-lot residential areas, that same vegetation might act as a screen or give the sense of a rural setting, thus increasing property values. Ordinances such as the weed control ordinance of Houston, Tex. (47), which state that weeds and brush depreciate property values, make weak generalizations and would better be replaced with something simlar to architectural review boards to judge economic and

aesthetic impacts. To the extent that architectural plans often include landscaping specifications, existing review boards may already be conversant in the aesthetic and economic problems of poorly placed vegetation (48).

This approach would have some problems. Buildings are more permanent than vegetation and often rely less on upkeep to maintain their aesthetic qualities. Vegetation is much less likely to conform with the site plan. And these boards have been used only for the approval of new construction, not existing sites, which is logical when dealing with buildings, but not very useful for dealing with nuisance vegetation. The board's scope would need to be expanded for effective control, and reasonable standards would need to be set, based either on some combination of cost-benefit analysis and aesthetic principles or perhaps, in jurisdictions strictly following Berman v. Parker 343 US 26 (1954) (49), aesthetic considerations alone.

Successful Challenges to Local Ordinances

Occasionally, the courts have uncovered problems with vegetation control ordinances, which bring to light some of the defects that they often suffer. Four such cases warrant notice. The first case, Vill. of Arlington Heights v. Schroeder 328 NE2d 74 (1974), found an equal protection problem, and ruled that the suburban community could not exempt agricultural lands from its weed control ordinance. The case against exemption was even stronger because of state statutes empowering municipalities to control agricultural weeds.

In two other cases, the courts found defects with the standards given to property owners. The lack of a height limit and of proper notice was found to invalidate an ordinance from Beaver Falls, Pa. (50), because a landowner would not know when he is in violation of the ordinance (51). The other decision raises more serious questions about the nature of necessary standards. In Mahon v. Co. of Sarasota 177 So2d 665 (1965), the Florida Supreme Court decided that the Sarasota Co. Lot Clearing Act was invalid. That act was similar to many others and was passed in response to a state enabling statute (52). But the court ruled that the combination of poorly defined standards and the manner of execution of the act made it invalid. Oral or written complaint by any resident of the county set in motion the nuisance control process, in a fashion similar to that upheld in Bowman v. State Entomologist, supra. The Florida court ruled that the statute's execution was made to depend on the unbridled discretion of a single person or unduly limited group of individuals.

As for standards, the act declared that accumulations of refuse or vegetation which are within 200′ of a structure may be found to be a nuisance as a fire or health hazard; and that to constitute a traffic hazard, the vegetation must be more than 2½′ in height and within 50′ of an intersection. Vegetation was further described as heavy, dense, or dank growths of weeds, grass, underbrush, palmettos, or other vegetation, which might communicate fire or serve as a breeding place for vermin. The court ruled that structure and intersection were not defined and that there were no standards to determine if possible nuisances actually were nuisances per accident. This decision is contrary to all others in the reporter system, but it raises interesting questions about what standards might be necessary for enforcement officials.

The fourth case also questioned standards and applied a notable point of law, overlooked by many other courts. In this case (53), the validity of the ordinance was upheld, but the standards were interpreted by the court. The vegetation control ordinance of Mt. Holly, NC directed all property owners to cut or shrub down to within 4″ of the ground all weeds, grass, or other noxious growth twice annually. If the owner refused, the city could enter the property and abate.

The town employees entered the property of Henry Rhyne, removed all noxious growth and oak trees, and bulldozed the topsoil into a pile, after Rhyne refused to cut his weeds. Rhyne sued to recover damages. In this case, the North Carolina Supreme Court ruled that his oak trees, 12 to 15′ tall, did not come under the category of "other noxious growth." The court thus defined more narrowly than other cases the nature of noxious growth and could reopen the door to examine the inclusive weed definitions which had been upheld

in early cases. So far this has not happened, but is justified in many cases (54). It has been recognized to a greater extent by city councils than it has by the courts, due to the environmental awareness of certain communities. Two examples of this awareness in action, are the natural vegetation permit system of Madison, Wis. and the very specific standards for nuisance vegetation in Urbana, Ill.

Beyond interpreting the vegetation definition, the North Carolina Supreme Court applied an interesting rule for the recovery of damages. Recovery of damages is usually denied when caused by city employees carrying out a governmental function (55), but if private property is damaged in the process then "the basis for liability *** is a partial taking of private property for a public use or purpose" (56). In a similar action for damages, Greenwood v. City of Lincoln 55 NW2d 343, 34 ALR2d 1203 (1952), a large number of raspberry bushes were destroyed during weed abatement, but the Nebraska Supreme Court failed to distinguish the bushes from other weeds and the partial taking rule was not applied, and did not seem to be argued.

The partial taking rule could be combined with strict definitions of nuisance vegetation to provide equitable relief for losses incurred by vegetation control. So far the courts have generally felt that such ordinances are beyond close scrutiny, but precedents are available for review.

Conclusion

A wide range of legal devices controlling the nature of vegetation has been reviewed and criticized. The inadequacies of common law remedies and the over-inclusive nature of the police power are noted. Suggestions for expanding trespass doctrine and rationally reviewing police power justifications are made. Hopefully, this report will direct weed control officials to legal decisions covering their work and direct legislative representatives to consider the problems and limitations of their statutes. May it result in more equitable defense of the nebulous bundle of property rights.

REFERENCES

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2. Attractive nuisances might include dangerous trees, nettles, poison oak and poison ivy. See note: Torts-attractive nuisance — a new rationale for refusing to extend liability for injuries caused by natural conditions, 1 B.Y. Univ. L. Rev. 561 (1975).
3. Common law of solar access, 6 Real Est. L.J. 320 (1978); Goble, Solar rights: guaranteeing a place in the sun, 57 Ore. L. Rev. 94 (1977); see also Granberry v. Jones, 188 Tenn. 51, 216 SW2d 721 (1949).
4. Beuscher *et al.*, Cs. Land Use 2nd ed., 2§1.
5. For a fine, comprehensive history of the waste doctrine from the Statute of Marlbridge to modern times, consult the decision of the New Jersey Court of Errors and Appeals in the case of Camden Trust v. Handle, 182 WJ E, 07, 26, A2d 865 (1942).
6. Lytle v. Payette-Oregon Slope Irrigation Distr. 152 P2d 934 (1944).
7. Campeau v. Hobbs 242 NW 850 (1932).
8. Hickman v. Mulder 180 Cal. R. 304 (1976).
9. See Noel, Nuisances from land in its natural condition, 56 Harv. L. Rev. 772 (1948) and Weed Control in Iowa, L. Rev. 348 (1949).
10. Cf. Harndon v. Stultz 100 NW 851 (1904), where the court stated in denying a request for injunctive relief, "It is not suggested that the growing by one upon his own land of cocklebur and weeds is without legal right, or that in law the field of the defendant constituted a nuisance."
11. For a well-thought criticism of the over-extension of "natural condition" see American Law of Peoperty §28. 29.
12. A Reitze, Environmental Law, 2nd ed. §5-28 (1972) discusses the advantages of using trespass doctrine in
13. The Oregon Supreme Court, in Davis v. Georgia-Pacific 445 P2d 481 (1968), ruled that an intruding object's energy or force is more important than its size. Trespasses may include the effect of vibrations (Gallin v. Poulou 283 P2d 958 (1956), crop sprays (Lee v. Lenhardt 362 P2d 312 (1961), fluorides (Reynolds Metals v. Lampert 316 F2d 2726 (1963), and smoke and particulates (Davis v. Georgia-Pacific, supra).
14. American law of Property §28.5.
15. Celebrity Studios v. Civetta Excavating 340 NYS2d C94 (1973).
16. Gallin v. Poulou, supra and Reynolds Metals v. Lampert, supra.
17. Id.
18. Restatement (Second) of Torts §158.
19. On limitations of the application of treapass doctrine in cases similar to the Preston v. Schrenk, supra nuisance case, see Hoover v. Horton 209 SW2d 346 (1948), where a Texas Ct. of Civ. Appeals ruled insufficient evidence to show trespass, because there was no proof of an affirmative act of negligence.
20. E. McQuillin, Municipal Corporations 3d §24.90.
21. Cal. W. An. Health & Saf. Code 14875 to 14922 and Mass. A.L.M. 1962 c. 40 §5 (3A).
22. Mass A.L.M. 1962 c. 40 §5 (36A).
23. e.g. Conn. G.S.A. 1975 §23-44, Idaho Code 1972 38-118, Iowa C.A. 327F21, La.S.A. 1978 56 §1479, Me.

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24. and also probably because the nuisance definition in the ordinance followed Cal. W.An. Health & Saf. Code 14875 to 14922.
25. especially their toxicity to other organisms and accumulation in the soil, R. Merrill, Toward a self-sustaining agriculture, in Radical Ag., 284 (1976).
26. e.g., for highway right-of-way: Conn. G.S.A. 1964 §13a-140, Ind. B.I.S.A. 1973 §8-17-1 to -2, Me. R.S.A. 30 §3954, Mo. V.A.M.S. 61.243 and for railroad crossings: Ark. A.S. 1947 An. (1979) 73-631 to -632, Ind. B.I.S.A. 1973 8-6-7.6-1 to -2, Iowa C.A. 327821, and IL. S-H I.A.S. 1975 121 §9-111.
27. Guillot v. Texas & Pacific Ry. Co. 8 La.App. 143 (1926) and Markle v. Chicago, Rock Island & Pac. Ry. Co. 257 NW 771 (1934). The finding in Guillot was ignored in a similar case before the same court, Rachal v. Texas & Pacific Ry. Co. 61 So2d 525 (1952).
28. See Shaw v. Chicago & Eastern Ill. RR. Co. 75 NE2d 51 (1947) and Mast v. Illinois Central RR. Co. 176 F2d 157 (1949).
29. citing Owens v. Town of Booneville 40 So2d 158 (1949) and Barton v. King Co. 139 P2d 1019 (1943).
30. See also Wright v. Travelers Ins. Co. 288 So2d 274 (1974), where health hazards were distinguished from traffic hazards, in the denial of a claim of contributory negligence based on the New Orleans City Weed Code; Of. Deamer v. Travelers Ins. Co. 223 So2d 224 (1969) where negligence was found.
31. Cal. W.An. Agric. Code 5951 to 5953, Conn. G.S.A. 1975 22-86-7, Mich. M.C.L.A. 1968 §286.101 to .112, Minn. S.A. 18.431 to .436.
32. Iowa C.A. 177A.19, Mich. M.C.L.A. 1968 §286.219, Minn. S.A. 18.331 to .335, Mont. C.A. 1979 80-7-301 to -304.
33. Il. S-H I.A.S. 1975 11-20-11 to -12, Mont. C.A. 1979 7-22-101 to -118.
34. In cases of Cedar-Apple Rust: Bowman v. State Entomologist 105 SE 141, 12 ALR 1136 (1920) and Miller v. State Entomologist 135 SE 813 (1926), Barberry: Gray v. Thorne 194 NW 961 (1923), Apple Scab: Colvill v. Fox 142 P 496 (1914), and Citrus Canker: La. St. Bd. v. Tanzmann 73 So 854 (1917).
35. The U.S. Supreme Court reaffirmed that power in Miller vs. Schoene 276 US 272 (1928), but presented no novel arguments compared to the earlier state precedents.
36. e.g., Alab. C. o A. 1975 2-25-3 to -17, Fla. S.A. 1966 33 §581.181, Ga. C.A. 1974 5-701 to -738, Idaho Code 1092 22-1901-13, Md. A.C.Md. Agric. 5-301 to -312, Mich. M.C.L.A. 1968 §286.201 to .218, Minn. S.A. 18.331 to .335.
37. Ark. A.S. 1947 An. (1979) 77-107 to -116.
38. Mont. C.A. 1979 80-7-101 to -210.
39. The determination of Peach Yellows, by the Director of the Conn. Agr. Exp. Sta., to be worthy of control was validated in State v. Main 69 Conn. 123, 37 A 80 (1897).
40. Ariz. A.P.S. 1974 3-331.01 to .11, Cal. W.An. Agric. Code 5781 to 5784, and, for fruit culture only, Ind. B.I.S.A. 1973 15-3-7-1 to -15.
41. Johnson Grass, Del. C.A. 1974 3-2401 to -2406, Ind. B.I.S.A. 1973 15-3-5-1, Ky. K.R.S. 1971 249.400 to .430, and La. S.A. 1973 3: 1791 to 1792, and thistle, Ind. B.I.S.A. 1973 15-3-4-1 to -7, Ky. K.R.S. 1971 249.180, La. S.A. 1973 3: 1801 to 1805, and Mo. V.A.M.S. 263.190 to .200 have been the most common species singled out.
42. e.g., Ariz. A.R.S. 1974 3-301 to -320, Ark. A.S. 1947 An. (1979) 77-105, Cal.W.An. Agric. Code 5004, Haw. R.S. 152-1 to -7, and Ky. K.R.S. 1971 249.145.
43. e.g., La. S.A. 1973 3:1791, Mich. M.C.L.A. 1968 247.71 to .72, and Minn. S.A. 18.201 and 18.211.
44. e.g., Colo. C.R.S. 1973 34-8-101 to -107, Il. S-H I.A.S. 1975 139 §39.06, and Kan. S.A. 1975 12-1617f.
45. State v. Boehm 100 NW 95 (1904), State v. Dawson 78 NE 352 (1906), and Northern Pacific Ry. Co. v. Adams Co. 138 P 307 (1914). See also Weed Control in Iowa, 34 Iowa L. Rev. 348 (1949).
46. best described in People ex. rel. Miller v. Chicago, Milwaukee & St. Paul Ry. Co. 145 NE 778 (1925).
47. Pope v. City of Houston 559 Sw2d 905 (1977).
48. For more information on law and the role of aesthetics and architectural review boards, consult Henley, Beautiful as Well as Sanitary — Architectural Control by Municipalities in Illinois, 59 Il.Bar J. 36 (1970) and Agee, Aesthetic Zoning: A Current Evaluation of the Law, 18 Univ. Fla. L. Rev. 430 (1965), and most recently, H.M. Bohlman and M.J. Dundas, Local Control of Architecture: Is it legal?, 9 Real Est. L.J. 17 (1980).
49. D.C., N.Y., and Ore.
50. Samuels v. City of Beaver Falls 5 Pa. D&C2d 500 (1955).
51. Surprisingly, a later Pennsylvania court allowed to stand a local ordinance which stated that the property owner shall not permit any natural vegetation to produce pollen (Ruppin v. Akron Borough 21 Pa. D&C2d 607 (1959), probably because of the existence of a 6" height limit. However, this pollen standard is nearly impossible to follow, especially for trees, and probably has not been enforced.
52. Fla. S.A. 1966 7 §167.05.
53. Rhyne v. Town of Mt. Holly 112 SE2d 40 (1960).
54. The definition of weed and weediness has been a subject for debate in the scientific community. Some of the conclusions reached about the nature of weeds, especially in an ecological or habitat context, would be useful in the design of more appropriate vegetation control laws. See J.R. Harlan and J.M.J. deWet, Some Thoughts About Weeds, 19 Econ. Bot. 18 (1965).
55. e.g., Lowe v. Conroy 97 NW 942 (1904) and Franklin v. City of Seattle 195 P 1015 (1920).
56. The court cited Dayton v. City of Asheville 115 SE 827, 30 ALR 1186 (1923).

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