LAND USE CONTROLS -- AN OVERVIEW

I. Introduction
   A. Land Use Controls
      1. Private: Servitudes, defeasible fees, nuisance
      2. Public: Zoning, Building codes, environmental legislation
   B. Natural/Inherent Rights or Positive Rights?
   C. Actors
      1. Landowner/developer, Lender, Broker
      2. Neighbors, Advocacy groups
      3. Government
         a. Political bodies
            (1) As Regulators (sovereign capacity)
            (2) As Owners (proprietary capacity)
         b. Courts
         c. Legislatures
         d. Popular Democracy (Initiative & Referendum)
   D. Through the lens of Judicial Review

II. Private Land Use Controls
   A. Servitudes
      1. Common law requirements
      2. Role of public policy in common law interpretation and enforcement
      3. Role of “state action” construct in subjecting servitudes to const’l scrutiny
         “[T]he conduct allegedly causing the deprivation of a federal right [must] be fairly attributable to the State. ... First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. ... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.”
   B. Nuisance Litigation
      1. Is there a nuisance situation in the first place?
         a. Gravity of harm to plaintiff
         b. Utility of defendant’s conduct
      2. Remedial consequences
         a. Traditional remedies - injunction and damages
         b. Evolving remedial alternatives (Calabresi-Melamed)
III. Public Land Use Controls

A. Land Use Federalism
   1. Federal
   2. State
   3. Local
      a. Use Controls
      b. Structural Controls
      c. Environmental Controls
      d. Property protection Controls

B. Institutional Decisionmakers at the Local Level
   1. Legislative body
   2. Intermediate boards or commissions
      a. planning commission (legislative proposals)
      b. board of adjustment (adjudicatory body-variances)
   3. Zoning administrator

C. Processes at the local level
   1. Land use PLAN
   2. Zoning Ordinance and Zoning Map
   3. Implementation - permitted, conditional, prohibited

D. Challenges to local land use control
   1. Common law claims - nonconforming use, vested rights, estoppel
   2. Statutory claims
      a. variances
      b. writ proceedings
      c. statutory remedies
   3. Constitutional claims - state & federal
   4. "Hierarchy" of landowner arguments

E. Exhaustion of Administrative Remedies
   1. Deadlines for administrative appeals
   2. Appeals to appropriate administrative bodies/officials
   3. Deadlines for judicial proceedings

F. Exhaustion of Judicial Remedies--"Ripeness"