Course Materials
-LAND USE SUPPLEMENT, Fall 2012, by John Martinez. (Available at Bookstore)
-We will have guest speakers. You are responsible for the information and issues they discuss in the same manner as with respect to the course materials and class discussions.

First Assignment
For the first week of class, read the following three items:
1. The one-page article on Peter Rabbit (distributed to your mailboxes). Be prepared to make arguments for (a) Harley, (b) the city and (c) the neighbors.
2. In the Supplement: "Land Use Controls - An Overview". (I will lecture on it)
3. In the Supplement: "How Counties Work". (I will lecture on it)
I will make subsequent assignments on the second day of each week.

Grading
Each student's grade in the class will be determined as follows:
85% Final Examination (180 min. ÷ 50 questions = 3.6 minutes per question)
This will be a three-hour, in-class, multiple-choice examination. It will be "closed everything": You may not bring anything into the exam except black or blue pens, (no pencils) and correction tape, (no liquid paper).

15% Class Participation
I will call on students at random and will expect students to volunteer in class as well. The grade will be determined by the degree of preparation as reflected by the quantity and quality of student responses.
ABSOLUTELY, POSITIVELY sign up on my seating chart. If you do not sign up by the end of the second week of classes, you will not receive class participation credit. It is your responsibility to make sure your name gets on my seating chart. (I will email the final seating chart to the class so you can check.)

Office Hours
I will hold office hours as needed. You should email me your questions at mjohncentury@msn.com
I will schedule individual meetings as appropriate.

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive, (Union Building), Rm 162 or you can call 801-581-5020.

All written information in this course can be made available in alternative format with prior notification.
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)
(1) Plaintiff gets injunction (classic)
(2) Plaintiff gets damages only (Boomer)
(3) Plaintiff gets nothing. (Bove)
(4) Plaintiff gets injunction, but pays damages to defendant (Spur)

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"