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# EUGENE'S PROPOSED PROPERTY EAX INCREASE IS UNCONSTITUTIONAL

By Bill Sizemore  
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NewsWithViews.com

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When I drafted Measure 47, the property tax limitation voters approved in 1996, I included a provision prohibiting governments from up-zoning a parcel of real property and then increasing the tax on the property.

Some of my larger donors objected to my inclusion of this provision in the measure, because in the course of their business they often asked local governments to upzone property to force unwilling sellers to sell their property, so they could develop it. I did not agree with their objections and included the provision in the measure as a matter of principle. To their credit, they ultimately supported the measure even though it contained a provision not beneficial to their business.

In the pre-Measure 47 days, when governments would up-zone a property from say farm use to commercial use, the property taxes on that parcel would increase so dramatically that the owner could no longer afford the property taxes and was forced to sell.

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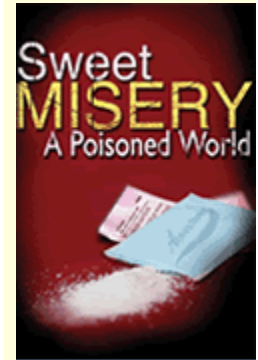
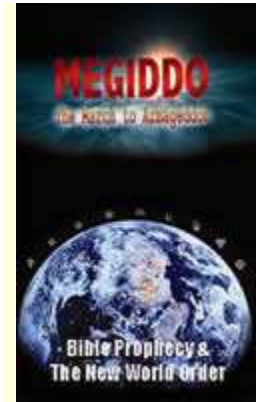
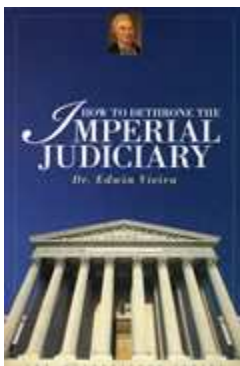
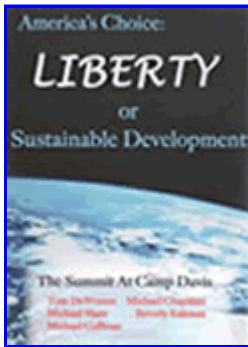
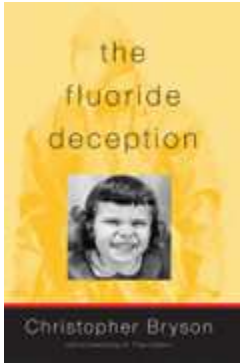
In the pre-Measure 47 days, when governments would up-zone a property from say farm use to commercial use, the property taxes on that parcel would increase so dramatically that the owner could no longer afford the property taxes and was forced to sell.

One elderly lady told me that her property, a small farm of less than 10 acres, was zoned for commercial use when a large medical clinic was built next door. She had lived on that property for more than 70 years and didn't want to sell. She had lived almost her entire life there and wanted to die there. This poor lady held out, even though she had to use her entire social security check to pay her new property tax bill.

That kind of abuse of the property tax code was common in Oregon prior to Measure 47 and a lot of people suffered as a result. In passing Measure 47, voters decided that government ought not have the power to use zoning laws and property tax increases to force homeowners out of their property for the benefit of developers.

Later, when the state legislature re-drafted Measure 47 and placed it on the ballot as Measure 50, which they did with my cooperation, I insisted that they include in the re-write the provision prohibiting increasing the tax on up-zoned property until the owner of the property actually used the property consistently with the new zoning. They concurred.

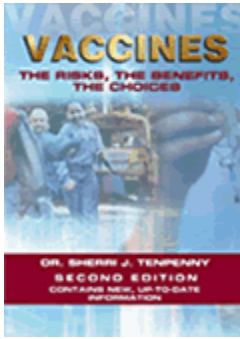
Measure 50, which is now part of Article XI of the Oregon Constitution, prohibits increases in the assessed value of a property in excess of three percent per year. There are specific exceptions to that limitation. One of the exceptions to the three percent limit reads: (C) The property is rezoned and used consistently with the rezoning. In other words, the three percent cap stays in place until the owner uses the property for the new use anticipated by the zone change.



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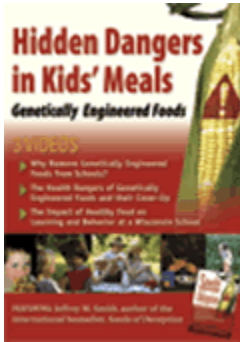
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For several months, the City of Eugene has been discussing imposing a new tax on property that has been upzoned and using the new revenue to pay Measure 37 claims. This new tax would be a violation of the Oregon Constitution, and any property owner subjected to this unconstitutional tax would have the right to sue to have the tax increase removed.

Measure 37 is a statutory version of the constitutional Measure Seven, which I wrote and placed on the ballot in 2000. Like Measure Seven, Measure 37 prohibits governments from placing a restriction on a parcel of property without compensating the owner for any loss of value resulting from the restriction.



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Under Measure 37, governments can either compensate the property owner or remove the land use restriction. A government, however, may not finance its land use restrictions by upzoning the property of someone else and increasing that owner's property tax until such time as the owner uses the property in a manner consistent with the new zoning.

If the City of Eugene want to continue restricting the use of private property, it will have to go back to the drawing board. The taxing scheme currently under consideration is unconstitutional.

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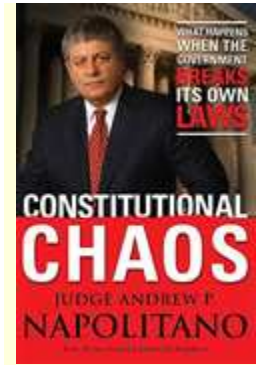
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*Bill Sizemore is considered one of the foremost experts on the initiative process in the nation, having placed dozens of measures on the statewide ballot. Bill was raised in the logging communities of the*



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