

# Who owns the fee?

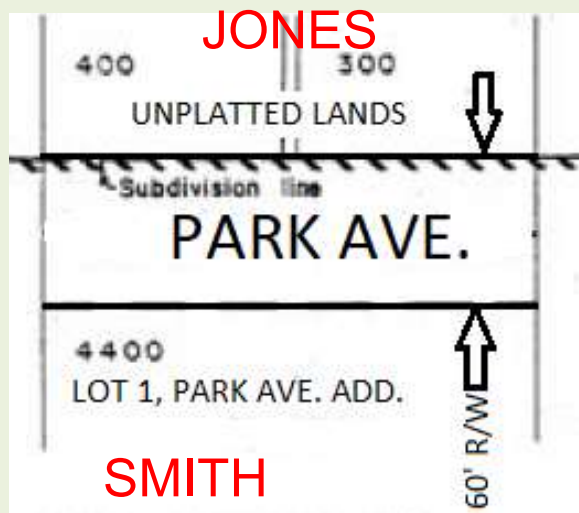
## Roads created in platted lands

The entire 60' of Park Ave. was dedicated in J. Smith's Plat of Park Avenue Addition.

The north R/W line of Park Ave. was contiguous with the south line of Jones' lands:

The City vacated Park Ave. and vested the property to the lands north and south equally.

Since Park Ave. had been dedicated in its entirety from the lands owned by Smith, ALL the R/W should have vested to the south:



# Who owns the fee?

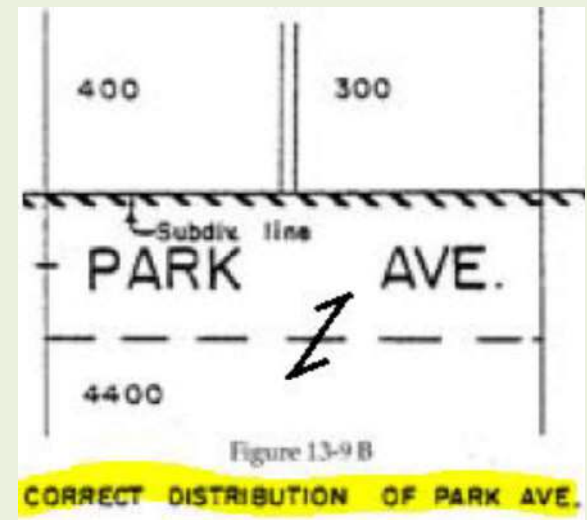
Roads created in platted lands

Baker City argued that Baker City ordinance no. 2041, section 3, provided that:  
*“The vacated property shall vest in the abutting properties in equal proportions...”*

This ran contrary to State Law:

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in **equal portions**; **except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to** and the street area which lies on each side of such boundary line shall attach to the abutting property on such side.

In such a case, the statutes and ordinances must be construed together and be given a construction which violates no constitutional provision.



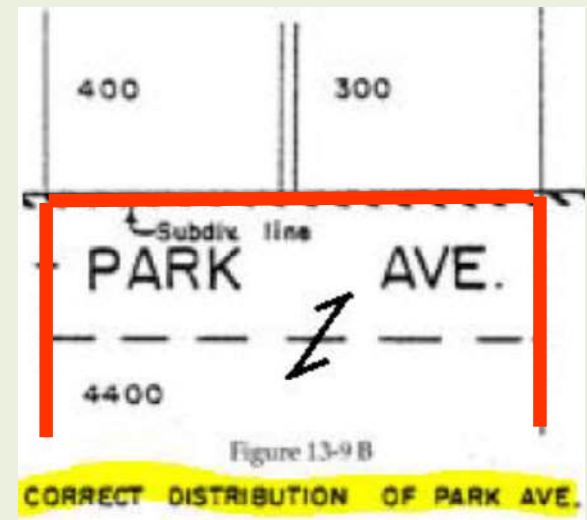
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Baker City case is predicated on the Missouri case of *Neil v. Independent Realty* (317 Mo1235)

In the *Neil v. Independent Realty* case, the court held that the defendant was not entitled to any part of the vacated street, as neither the defendant nor its predecessors in title had contributed to the street. The court said:

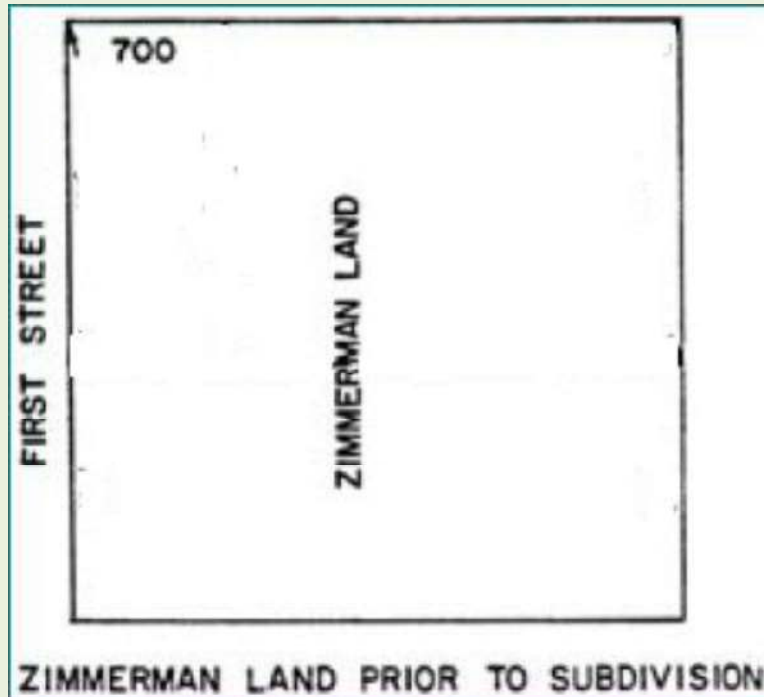
*“...The common law rule to the effect that adjoining owners had title to the middle of the highway rested on the presumption that they had contributed equally to the road, but if the facts showed to the contrary, the rule did not apply. In other words, the fact would govern rather than mere presumption. Out of this grew the rule that if the highway was taken wholly from one man’s property and such highway is vacated, the land in fee reverts to the original owner, or his grantees, free from the public use or easement.”*



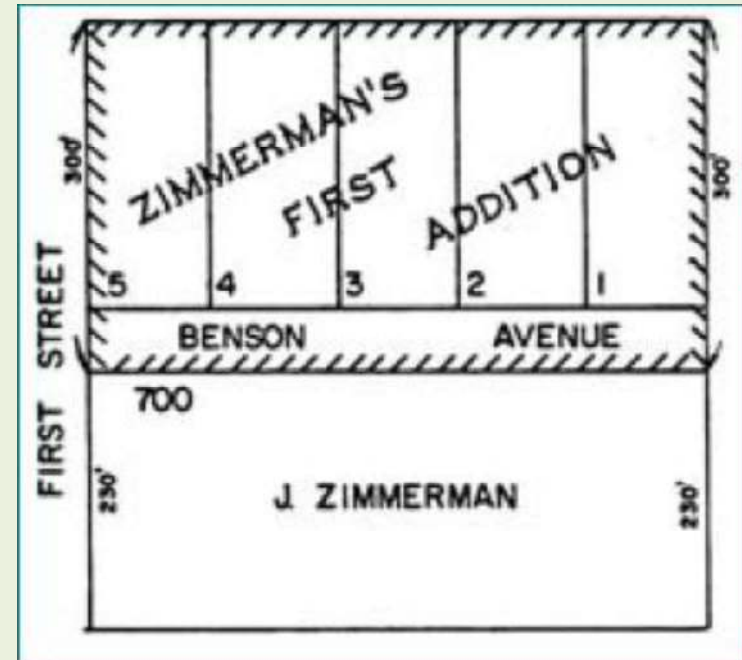
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There is another scenario to the “Park Ave. Case” discussed in the ORMAPP manual beginning on page 16-47. Problem 4: Abutting Property of the Dedicator



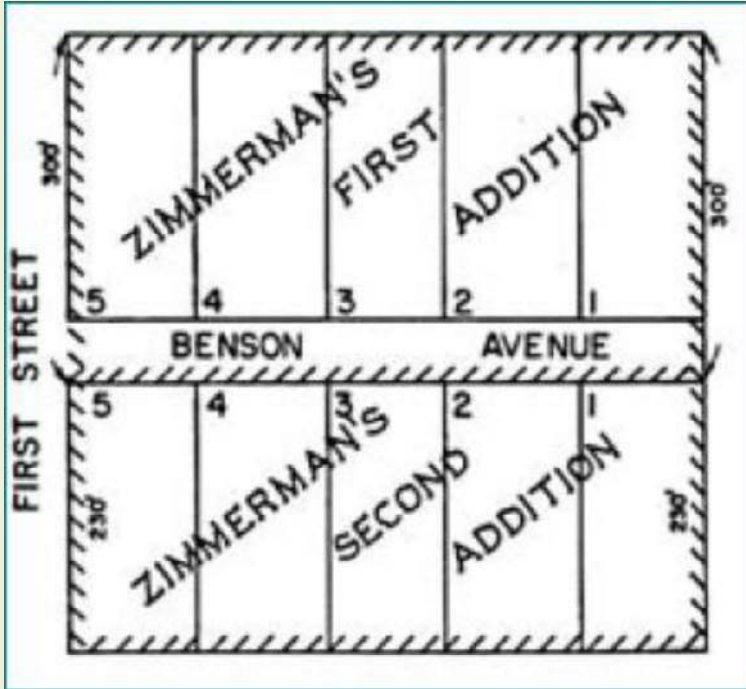
1. Zimmerman owns tax lot 700



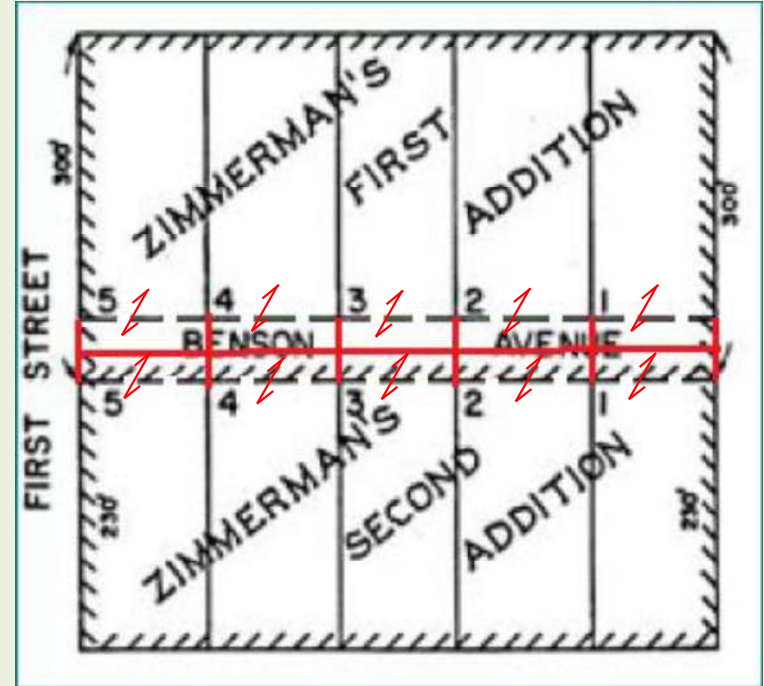
2. Zimmerman subdivides north 300 feet. Dedicates 60' wide Benson Ave. along South 60 feet of plat

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## Problem 4: Abutting Property of the Dedicator



3. Zimmerman subdivides remainder of property, with north line of Second Addition being the south line of Benson Ave.



4. Benson Ave. is vacated. R/W vests to centerline of Benson for lots in First and Second Additions.

ORMAP pg. 13-28 “the governing factor is *the person or persons who dedicated the street*. ...although a street lies entirely in a subdivision (forming one border of the subdivision) it could revert to the owners on both sides of the street if the person that dedicated the street owned the land on both sides of the street **at the time of the dedication.**”

The same principles were used in *Howe v. Greenleaf*, 260 Ore App. 692 (2014)