



MEMORANDUM

TO: City of Venice Planning and Zoning Department

FROM: Atlas Law on behalf of King's Gate Condominium Association

RE: Property Line Dispute

DATE: August 31, 2020

DISCUSSION

Under the legal doctrine of boundary by acquiescence, the location of King's Gate's barbed-wire fence for a period of fifty (50) years establishes the current, enforceable property line. Therefore, King's Gate objects to any amendment to the Venice Comprehensive Plan Future Land Use Map which adjusts the boundary line from its established location represented by the barbed-wire fence along King's Gate's Southern property line.

A person has the ability to obtain rights in the land of another by occupying it for a number of years through the legal doctrine of 'adverse possession', more commonly referred to as 'squatters rights'. Florida statutes specifically require that the person claiming adverse possession pay taxes on the land claimed.¹ This requirement severely limits application of the doctrine of adverse possession to boundary disputes.

Instead of adverse possession, the legal doctrine of 'acquiescence' is most often applied by courts when there is confusion or disputes over the location of property lines. Acquiescence occurs when neighboring property owners both treat an area as the property line even though it is not the true boundary line according to the original plat plan.

Unlike adverse possession, the payment of taxes on the land claimed is not necessary to establish recognition and acquiescence in the new boundary. In fact, many of the elements of adverse possession are not required to prove acquiescence to a new boundary.

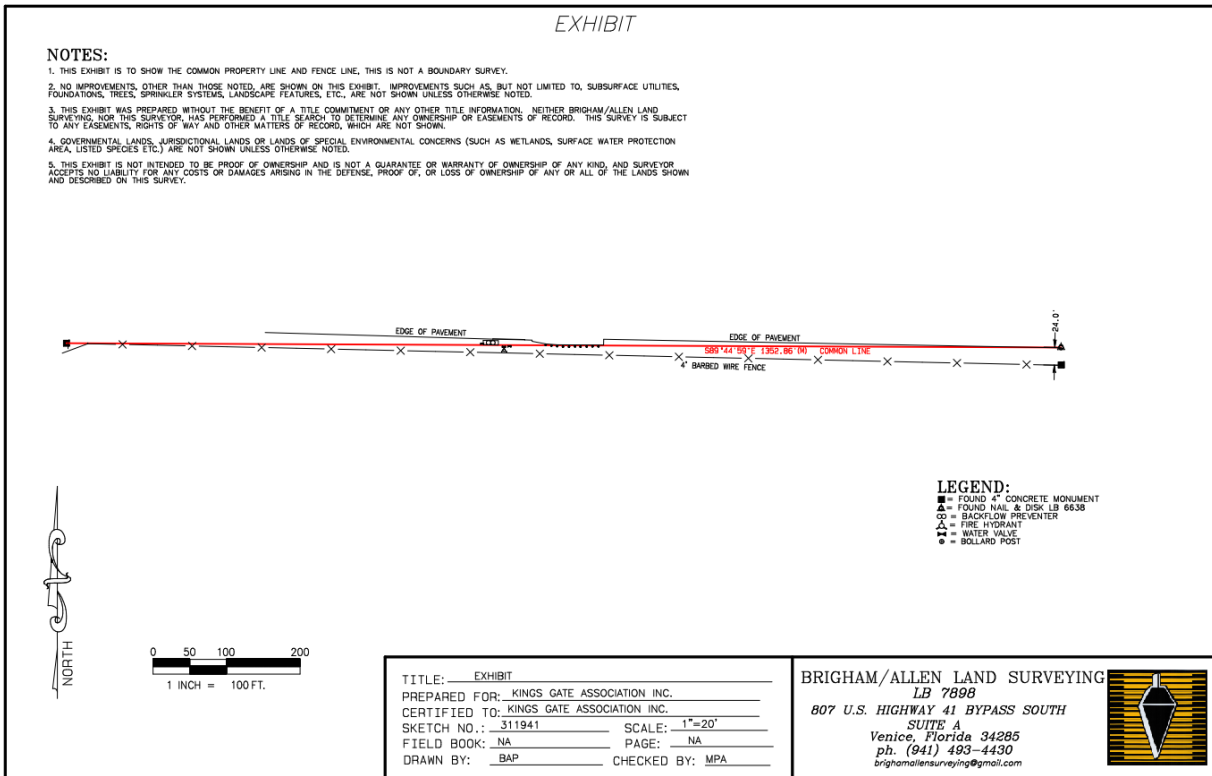
The necessary elements to establish a boundary by acquiescence are:

- (1) uncertainty or dispute as to the location of the true boundary line;
- (2) mutual recognition of the establishment of a new boundary regardless of the true boundary between properties; and
- (3) continued occupation and acquiescence in the new boundary for over seven years.²

¹ § 95.18(1), Florida Statutes

² *Shaw v. Williams*, 50 So.2d 125, 126 (Fla. 1950)

In the context of boundary by acquiescence, "uncertainty" has been defined as an actual lack of knowledge on the part of both landowners of the true boundary; the uncertainty must be mutual as to both property owners.³



A barbed wire fence has been located on the recognized boundary line between King's Gate and the property on its southern border for fifty (50) years. Recent surveys indicate the fence does not match the original boundary line. The placement of King's Gate's fence in an open and notorious manner for many years gives rise to a presumption that the neighboring landowners regarded the fence as the new boundary delineating who owned which portions of the real estate.

As such, absent any other explanation as to the fence's specific location, King's Gate has met the elements to establish ownership under the doctrine of acquiescence. Both neighboring landowners have mutually recognized the location of King's Gate's fence as the new boundary line, regardless of the prior boundary line between the properties as originally platted. Therefore, King's Gate objects to any amendment to the Venice Comprehensive Plan Future Land Use Map which adjusts the boundary line from its established location at the barbed-wire fence along its Southern border.

³ *Sembler Marine v. Skidmore*, 842 So. 2d 1003 (Fla. 4th DCA 2003)