

CASTLE PINES NORTH



METROPOLITAN DISTRICT

Castle Pines North Metro District (CPNMD) Board of Directors

Resolution # 2019-01

Clarifying Certain Privacy Fence Ownership, Maintenance, Replacement & Liability Responsibilities within the Castle Pines North Metro District, Douglas County, Colorado

- WHEREAS,** The CPNMD Board of Directors has a fiduciary responsibility to all homeowners and property owners within its boundaries to be a responsible steward of specifically designated community assets, including drinking water, wastewater, stormwater, parks, trails, and open space services and in doing so minimize potential personal injury, private property damage, and unsafe conditions; and
- WHEREAS,** Homeowners frequently complain to CPNMD about the lack of maintenance on highly visible privacy fencing located on the south side of Castle Pines Parkway, between Yorkshire Drive and Shoreham Drive neighborhoods in the Royal Hill and KnightsBridge neighborhoods; and
- WHEREAS,** In 1985, the original developer of the Royal Hill and KnightsBridge neighborhoods (Writer Corp, a Colorado corporation and major developer) or subsequent owners have inadvertently constructed said privacy fencing on what is now CPNMD property with no evidence of permission or acceptance of said privacy fencing from either Douglas County or CPNMD; and
- WHEREAS,** CPNMD neither constructed, nor authorized the construction of, said privacy fence and has no ownership, maintenance, replacement responsibility for said privacy fence; and
- WHEREAS,** Said privacy fence is not now, nor has it ever been, part of any CPNMD service plan; and
- WHEREAS,** The existence of unauthorized privacy fence segments on CPNMD property creates potential maintenance, personal injury, and private property damage

liabilities for CPNMD, and by extension, for every homeowner and property owner within; and

WHEREAS, Multiple homeowners adjacent to said privacy fence have repainted, repaired, and replaced various privacy fence segments adjacent to their respective homes, which suggests that homeowners acknowledge their privacy fence-related responsibilities; and

WHEREAS, CPNMD respects the rights of the fourteen homeowners immediately adjacent to said privacy fencing to maintain and replace any/all privacy fence segments on and/or immediately adjacent to their respective properties and has neither interfered with — nor has any interest in interfering with — said privacy fence ownership, maintenance, and replacement; and

WHEREAS, Dated October 18, 1984, the **MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CASTLE PINES NORTH, ARTICLE I, STATEMENT OF PURPOSE AND IMPOSITION OF COVENANTS, Section 1.2** states: *“Declarant intends to encourage the erection of attractive, permanent improvements appropriately located to preserve a harmonious appearance and function...”*; and

WHEREAS, Section 5.16 of that same October 18, 1984, document further states: *“If either the Master Association or the District should fail or refuse to provide the services which it is obligated to provide under its respective formative documents for any reason, then the other, permitted by law and to the best of its ability, shall assume said obligation...”*; and

WHEREAS, In its legal opinion, dated September 18, 2015, the law firm of Collins, Cockrell & Cole, which specializes in Colorado special district law, indicates that the privacy fence in question delineates homeowner yards, provides homeowner privacy, and is primarily for the benefit of individual homeowners; and

WHEREAS, That same legal opinion states: *‘If both the sub-associations and homeowners are unwilling to take responsibility for fencing, the District may want to consider removing the fencing from District-owned property altogether to reduce any liability for potential injuries caused by dangerous conditions on District-owned property, regardless of who constructed or created the dangerous condition’*; and

WHEREAS, That same legal opinion further states: *'Knowingly leaving rundown fencing on District-owned property subject to fall or otherwise injure persons nearby will open the District up to liability for such injuries';* and

WHEREAS, CPNMD's existing legal counsel at the law firm of Seter & Vander Wall concurs with the above-referenced legal opinion and further advises that, in the absence of the Master Association enforcing the **Castle Pines North Design Guidelines For Residential Development** (dated February 24, 1986), CPNMD may remove said privacy fencing;

NOW THEREFORE BE IT RESOLVED THAT AS OF THIS DAY, _____ 2019, THE CASTLE PINES NORTH METRO DISTRICT BOARD OF DIRECTORS HEREBY DETERMINES THAT:

- I.** Where said privacy fencing exists on CPNMD property — to **further** safeguard the public from potentially unsafe conditions and from potential personal injury, private property damage, and further liabilities, and to reaffirm CPNMD's recognition that said privacy fence ownership, maintenance, and replacement are the exclusive responsibilities of the fourteen homeowners immediately adjacent to said privacy fence — **CPNMD will promptly issue a CPNMD Property Access & Privacy Fence-Maintenance Easement** to each adjacent homeowner.
- II.** Said CPNMD Property Access & Privacy Fence-Maintenance Easement shall require conformance, first, with the laws of the State of Colorado; second, with the February 15, 1985, HOA 1 Supplemental Declaration of Covenants & Restrictions; and third, with the February 24, 1986, Castle Pines North Design Guidelines for Residential Development that have defined and governed — and continue to define and govern — said privacy fencing.
- III.** Though CPNMD intends that said CPNMD Property Access & Privacy Fence-Maintenance Easement will be in effect in perpetuity, said easement will **also** include a **formal notice** that adjacent homeowners and/or HOA I (sub association) must repair fence-maintenance deficiencies within the next 30 days (by no later than _____, 2019), as set out in the **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CASTLE PINES NORTH FILING NUMBER 1, SECTION 5.4.**
- IV.** Said privacy fence-maintenance deficiencies and design-deficiencies not completed by _____, 2019, shall prompt CPNMD staff and/or contractors to remove all said privacy fence segments from CPNMD property, at which point CPNMD will

respectfully encourage HOA I (sub association) and the homeowner(s) adjacent to said privacy fence segment(s) to collaboratively position any/all desired replacement fencing and/or visual-screening vegetation exclusively on private homeowner property; and

V. To avoid/preempt similar privacy fence-related ownership, maintenance, replacement, and associated liability issues that may arise elsewhere within CPNMD, this resolution establishes a clear and unequivocal precedent that shall apply, in perpetuity, to all privacy fences found to be on CPNMD property for which HOAs and/or homeowners may seek to ignore or shift their respective privacy fence-related responsibilities to CPNMD.

VI. Upon CPNMD board passage of this resolution, CPNMD staff will promptly disseminate signed copies:

- to the homepage of CPNMD’s website at www.cpnmd.org;
- via certified mail, to HOA I and to each of the homeowners adjacent to the existing privacy fence;
- to the City of Castle Pines; and
- via broadcast email to CPNMD’s customers.

Adopted and approved this _____ day of _____ 2019.

David McEntire
President
Castle Pines North Metro District

Robert Merritt
Vice President
Castle Pines North Metro District

Denise Crew
Director
Castle Pines North Metro District

Chuck Lowen
Director
Castle Pines North Metro District

Christopher Lewis

Director

Castle Pines North Metro District

Attest: **Jim Worley**

District Manager

Castle Pines North Metro District

Approved as to Form: **Kim J. Seter, Esq.**

First-Reading Draft