

**BEMIDJI AREA SCHOOLS  
BEMIDJI, MINNESOTA**

**DATE: APRIL 15, 2024**

**TO: BOARD OF EDUCATION**

**FROM: ASHLEY EASTRIDGE, CPA, DIRECTOR OF BUSINESS SERVICES**

**SUBJECT: ENCROACHMENT AGREEMENT - LINCOLN ELEMENTARY**

**COMMENTS:**

In July 2022, the District completed a survey of the Lincoln Elementary property lines in order to install a fence. It was indicated in that survey that multiple property owners had built structures that were on the District property. At the time of the survey the District decided to not take any action in regards to the encroachments.

On March 28, 2024 the District was notified that one of the properties described previously was being sold and the buyer and seller would like to resolve this matter before they finalize the sale. Our legal counsel has advised the District on three options.

**Option 1: Prepare an encroachment agreement.** The District and property owner(s) would enter into a written and recorded agreement that legally describes the property that is encroaching onto the District's property and then provides specific parameters regarding its use, i.e. it cannot be expanded, replaced, etc. It would also include language that requires the property owner to insure the property and to hold the District harmless from any damages. While the District is allowing the property owner to continue to use that property, it also places guardrails on the use and guarantees there is no future expansion.

**Option 2: Force the property owner to remove the encroaching structures.** This would likely end up in a type of lawsuit known as a quiet title action, where the District would ask a court to find that the District owns the property at issue and to force the other individuals off by removing the encroaching structures. There are more costs associated with this option and there is a chance that a court disagrees with the District's arguments. This would also put a larger financial burden on the property owner.

**Option 3: Do nothing.** The District could choose to proceed as-is without any changes, but there are concerns with this. Having a document that requires a property owner to insure the property and to hold the District harmless best protects the District from future damages if something happened to the building.

**ACTION:**

The motion was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, and carried ( ) to authorize the Director of Business Services to execute an encroachment agreement with each property owner(s) that this applies to.