

# The EVENING Tribune

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## Davis, Hess back as Hornell BOE leaders

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### Attorney discusses process to sell a Hornell school building

HORNELL — The Hornell City School District Board of Education got started on the 2020-21 academic year Wednesday the same way it ended 2019-20 — with Kerry Davis as board president, Jessica Hess as vice president, and with the panel meeting virtually due to the COVID-19 pandemic.

One difference from the prior academic year — which ended Tuesday — is the board is now at full strength with seven members. Christopher R. Clark was sworn in to office after he won the remaining three years of an unexpired term in last month's budget vote/school board election.

As for the board's leadership, Davis and Hess were reelected by their colleagues in unanimous votes and began their fourth years as president and vice president, respectively.

Hess is beginning a new five-year term after she was reelected by voters last month.

Both Davis and Hess are Hornell High School graduates.

The school board also approved dozens of annual appointments during its reorganizational meeting, OKing a lengthy slate of district officers, committees, legal representatives, tax collector, bank depository and policies and procedures.

Carol Eaton was returned as clerk of the board and Sue Brown was retained as board treasurer.

Meanwhile, the school board heard from Andrew Freeman of the Hodgson Russ law firm about the process of selling a school building.

Superintendent Jeremy Palotti characterized Freeman's presentation as a natural followup to

the district's Long Range Facilities Plan project.

"He and I have had some ongoing conversations . . . looking at our long-range facilities plan," Palotti said. "It started with LaBella Associates with a recommendation to reducing the footprint of our district. From there, we've worked with our facilities committee, really looking through what that might potentially look like.

"Part of that process as far as reducing our footprint could involve potentially closing or selling a building. With anything, there's a process involved in that."

Freeman cautioned that Wednesday presentation would not mention specific school buildings.

"We're not going to talk about any specific offer that we may or may not have. We're just going to stick to some high-level points," Freeman said.

The attorney outlined the process of selling a district holding, noting that any sale would require both the school board and public approval.

Freeman said, "First what a school has to do is decide, through what the superintendent just referenced, go through a district facility process, discussions about, 'Do we actually need this property?' What I heard the superintendent mention is that you folks may be looking to reduce your footprint and make what you have work just a little bit differently."

The school board must at "some point pass a resolution saying that this real property is no longer needed and it's not needed for district purposes," Freeman said.

Voters will weigh in before any property is sold.

"Approval is required in order to sell property, so ultimately if we decide to enter into a transaction and the board determines that the property is no longer needed, and we have a sales contract, before that sales contract can be finalized, we do have to put this to a vote," Freeman said. "You may decide to have a vote in December, or it could be whenever you decide what's most appropriate."

Freeman said the school board has "broad" discretion in determining how to advertise the property's availability, but that discretion must also be "sound," he noted.

Options the district could follow include a sealed bid, a public auction, a letter of intent,

submission of proposals or direct negotiations with a single party.

“When you do look to sell a property, it’s not governed by competitive bidding, so you don’t have that going on out there,” Freeman said. “You are free to use whatever procedure you believe will yield the best price for the property.

“The determination for what the property will be sold for is really a broad discretion within the board’s prerogative but while you have broad discretion, you also have to have sound discretion.

“You do have a fiduciary duty to obtain the best price possible, but you also have to look at the best price possible for the lawful use of the property, so it’s not just fair market value. There are many other considerations that a board can use to determine what is the best possible price for this particular piece of property.

“Just generally speaking, there are limitations on a district’s ability to cherry pick who the ultimate (buyer) may be, so you want to avoid the appearance of any impropriety in these sales and make sure that they are arm’s length transactions.”

Freeman also covered details of any sale, including environmental review, the buyer’s due diligence and closing contingencies. He said the district would be exempt from a transfer tax.

Even after that process, the sale could be halted in its tracks.

“Let’s say you made it through six months and everything looked on track, if the voters don’t approve the sale, again, that can’t go through,” he said.

Notably, following the open live-streamed meeting, the school board adjourned to go behind doors in an executive session “to discuss legal matters.” The school board invited Freeman to the closed-door session.

### **Next meeting**

The school board is scheduled to meet next on Wednesday, Aug. 5 at 5:15 p.m. There has been no decision yet if the board will meet in the high school library or if it will be a virtual, live-streamed session.