

## **Rosa Bahler, Rolland Disch, Kris Kubly and Penny Kubly Timeline**

**Introduction:** The current abutting properties owned by Kris and Penny Kubly that is identified as Four Oaks is a complicated collection of properties that must be assessed individually to determine the development rights that are available and which may ultimately have an impact upon their proposed projects. I have tried to organize the material somewhat chronologically although I have violated that methodology in a few instances to provide more information.

**Description of Properties:** At date of Ordinance, 971013, Rolland Disch, Penny Kubly's father had 109.75 contiguous acres of property located in Sections 22, 23, 26, and 27 in the Town of New Glarus. These properties had the combined potential of three large lots or eight cluster lots. One of the splits or cluster lots would be needed for the existing farmstead along with the required open space.

At date of Ordinance, 971013, Kris Kubly owned 43.44 contiguous acres of property located in Sections 22 and 23. These properties had the combined potential of one large lot or three cluster lots. There were no existing improvements on the property at that time.

On 980914 at the Regular Town Board meeting discussed the pending Public Hearing for the ATV storage and testing facility held on 980930 with the following results:

McKenzie moved to treat R. Disch application for change in zoning same as done in past. 2<sup>nd</sup> Smith. Passed.

No minutes for this Public Hearing have been found.

On 981116 Rolland Disch's home farm was included on CSM #2634 that included 10.0 acres. The balance of the property, 99.75 acres, was sold to Kris and Penny Kubly. The Kublys are responsible for identifying the location of the additional 25 acres of required open space for the one large lot split for Mr. Disch's farmstead. It is my assumption that the two remaining large lot or five cluster lot potential of the property sold was transferred to the Kublys. There is indication on CSM 2634 for a proposed access easement to the balance of the property sold. The Town Office does not have a copy of that separate description.

At date of Ordinance 971013 the contiguous property owned by the Bahler Trust totaled 53.03 acres. There was one existing home on tax parcel 165.0000. Prior to the Ordinance 20.0 acres of that parcel had been sold to the School District of New Glarus in 1991 (CSM 1169) for the High School, which was subsequently annexed by the Village in August of 1995. In December of 1996 the Village of New Glarus annexed 1.21 acres owned by Dwight and Marilyn Elmer currently owned by the Schieldts, 1607 2<sup>nd</sup> Street to the north of the field road to tax parcel 165.0000 currently owned by the Kublys. It is likely that the Elmer property had formerly been tax parcel 165.2000 which was noted in the 1997 and 1998 Assessment Rolls as having been annexed by the Village without a description of the property.

On 981214 members of the Town Board "accepted the annexation for a portion of Rosa Bahler's property in trust as proposed". The property was not identified by size, tax parcel identification numbers, or by metes and bounds; however, on 990215 the Village of New Glarus annexed 2.0 acres of

property from the Rosa Bahler Trust that was part of tax parcel 165.0000. The property is located south of 14<sup>th</sup> Avenue and east of Highway 69 and is currently 2.41 acres in size owned by Judd Auto Body, CSM 2742. Correspondingly tax parcel 165.0000 diminished in size from 53.03 acres according to the Town's Assessment Rolls between 1999 and 2000 to 50.62 acres. Outlot 1 of CSM 2742 (0.45 acres) was probably annexed with the rest of the property and was eventually sold to the Village of New Glarus.

At the 020211 Regular Town Board meeting Chair Freitag reported on potential annexation of Bahler properties that included land to the south of CSM 2742 (see above) and land where the New Glarus branch of the Monroe Clinic was being built (contained in CSM 3323). In April of 2002 the Town Board approved CSM 3369 that split 5.41 acres from tax parcel 165.0000 for the Rosa Bahler Trust to the south of CSM 2742. In the 020419 Public Hearing minutes there is discussion of property division of Bahler Trust lands to sell to New Glarus Motors that was approved with the stipulation by the Village of New Glarus that it will be annexed if approved by the Town.

I am uncertain when the Board approved CSM 3394 that describes 14.63 acres still retained by the Bahler Trust to the south of CSM 3369. Both properties (20.04 acres) were annexed by the Village in May of 2002. The 2003 Town Assessment Roll reflects that tax parcel 165.0000 was reduced from 50.62 acres to 29.50 acres, a difference of 21.12 acres. Perhaps the difference in the two figures is due to the property contained east of the meander line described in both CSMs that allows for a change in course for the Little Sugar River.

In the 2004 Assessment Roll all properties owned individually by Kris Kubly (parcels 160.1000, 160.0000, and 168.00000) and jointly by Kris and Penny Kubly (parcels 161.0000, 170.0000, 205.0000, and 191.2000) are listed as Four Oaks. Although incorporated under one name, the properties must still be reviewed separately for development rights using unique split computations in to determine building sites and open space requirements for the same. Parcel 165.2000 which had described property annexed by the Village in 1996 was reassigned to describe 4.90 acres of the Bahler Trust property purchased by Four Oaks, probably in 2004. It is doubtful that any development potential was transferred with the purchase of this property as the tax identification number was recycled rather than existing to describe this property independent of 165.0000 prior to date of ordinance. It is my opinion, therefore, that this property is a means of gaining access to those properties held to the north and is without development potential.

In the 2006 Assessment Roll Roger and Lisa Behnke are listed as the owners of parcel 165.1000 prior to the sale of 165.0000 (with the narrow strip of property connecting it to 2<sup>nd</sup> Street) by the Bahler Trust to Four Oaks. 165.1000 had been owned by Ron and Jane Martinson until 2003 when it was sold to Patrick Culbert who probably resold the 4.93 acres to the Behnkes in 2005. The 2007 Assessment Roll reflects the transfer of ownership to Four Oaks of the Bahler property 165.0000 totaling 23.44 acres. According to the 060615 Regular Town Board minutes:

Hans Justeson appeared for Kris & Penny Kubly regarding a piece of property (23 acres presently owned by Rosa Bahler located in Sect.23) that Kubly's (sic) have under option to purchase. He questioned whether Town would allow access. Advice given was, the 15 feet wide access to

Second Avenue (sic) might be used as normal drive access by an owner, but it does not comprise a legal drive. Another access of legal width, slope, etc. would have to be provided, possibly along south property line or via easement south to Hwy. H. He was also advised to contact the Village regarding access on Second Street since the east half of Second St. is within the Village.

At the 060822 Plan Commission meeting the following was noted:

K. Seward reported that Kris and Penny Kubly consulted the Village of New Glarus as directed by the Town concerning their driveway application for property adjacent to the New Glarus High School. The Village did not oppose the proposed location of an outlet south of the High School onto 2<sup>nd</sup> Avenue (sic); they considered this property as part of the Town. Members were provided a copy of the letter from the Village of New Glarus to Kris and Penny Kubly dated August 1, 2006. C. Narveson provided members with a large copy of the Plat of Survey of the property for each member to review. The Kublys are working with the Town's Building Inspector, Fred Hankel, in their attempt to build a driveway that is near the south edge of the school property. Fred didn't think the process would be difficult. Members continued to express concerns that the proposed drive was an access to the Kubly property yet too narrow to allow for a fifteen foot easement necessary to be considered a legal driveway.

In 2008 the Kublys received permission from the Wisconsin DNR to install a clear span bridge across the Legler School Branch of the Little Sugar River. On July 28, 2008 Deputy Clerk Wright was requested to transcribe the minutes from the microcassette used to record the 060822 meeting as follows:

Keith Seward introduced the members present to the recent history regarding the Kubly property located off of 2<sup>nd</sup> Street, adjacent to the New Glarus High School. Seward noted that the Town had referred the Kublys to the Village to see if they needed to get involved in the driveway permit which had proposed access onto 2<sup>nd</sup> Street. The Village stated that they did not need to be involved because the property itself was part of the Town. According to Seward, the Kublys have been in touch with Fred Hankel, the Town's Building Inspector who did not think access to the south of the school would be problematic.

R. Reis asked if the proposed drive was to gain access to the property to the west of the school. C. Narveson noted that there is a slender strip of property to the north of the school that is too narrow to constitute a legal driveway. He thought the Kublys had given up on access to the north and were now seeking access by way of the steeper portion of the property to the south. D. Sherven commented on how steep the contours are on that portion of the property. R. Reis agreed and said that the drive would probably have to be constructed as a switchback. Seward noted that one map would suggest that half of the narrow strip is in the Town and the other half in the Village according to one map, but that another map suggested all the strip was in the Town.

The driveway and its purpose was again the topic of discussion at the 080925 Plan Commission meeting as follows:

Review Driveway Plan with Dave Jenkins of JSD for Southern Access to Kubly Property off 2<sup>nd</sup> Street. K. Seward referred the members present to an aerial map with an outline that defines the boundaries

of the property in question, which is located west of 2<sup>nd</sup> Street and north of County Highway H. Dave Jenkins stated that JSD met with representatives from the Town and Village approximately one year ago to determine where the access for the proposed driveway should be located. Jenkins then presented plans for the driveway which was designed around the Town's standards and is approximately 800 linear feet in length; the design includes the required turnout for emergency vehicles. This proposed driveway accesses 2<sup>nd</sup> Street immediately south of the NG High School.

R. Reis asked for what purpose the driveway is to be built. Kris Kubly stated that the immediate use would be for tractor and pickup truck access to the property; in the future the driveway may be used to access a farm building yet to be built. Kubly stated that there are no plans at this time to use this driveway to access a residence or business, although the future plan for the building may include a heated workshop. It was noted by the members present that the Kubly's current proposed use would only require a field road, not a driveway built to Town standards. Dave Jenkins noted that JSD has worked with NG Fire Chief, Dave Anderson on developing the design. In response to a question from J. Ott, Jenkins believes the inner radius of the curve to be forty-two feet. According to Jenkins the switchback has been located to take advantage of the topography to minimize the displacement of earth by cutting or filling.

K. Seward stated that although the Fire Chief might have given approval of the design as it was presented on paper; in reality the proposed design might create problems in the winter months for emergency vehicles access, particularly along the switchback. Seward suggested that the Commission may want to seek further input from the NGFD and EMS prior to the construction phase of the project. Jenkins agreed to meet again with the NGFD and EMS if that was the recommendation of this body; his main concern is to begin construction soon to complete the construction before the seasonal change in temperature. Jenkins stated that he has met with the Town's Building Inspector Mike Fenley. Seward noted that Fenley works in the capacity for the Town as an inspector not an engineer. Seward stated that the Planning Commission will need to contact the Town's Engineers at Vierbicher Associates about their need to review the plan and engineering study that has been conducted by JSD for the Kublys.

K. Seward requested that the Kublys share what the future plans are for their property that totals 172.09 acres in area. Currently the Kubly's rent an unheated barn off of H from Penny's parents; there are no structures on the Kubly property at present other than the remains of an existing historic structure. The southern access will be used to access a heated barn at some undetermined future date. It was noted that the property has been restored to tall grass prairie and the invasive plants are in the process of being removed from the woodlands. Kubly further stated that there are no plans for developing the property for building sites; their emphasis is upon prairie restoration instead. R. Reis voiced concern that the location for the proposed agricultural shed would be highly visible if it is built atop the bluff, and therefore expressed his wish that the design be aesthetically pleasing. D. Sherven did not think the Land Planning Commission has the authority to oversee the design of agricultural structures from an aesthetic standpoint. Reis agreed that an aesthetic preference cannot be enforced, but he felt that it was the duty of this body to relay the preference as established by the wishes of the community to developers. Thomson noted that it is the Town's preference that any structure be located below the ridgeline to limit its visual impact upon the visual beauty of the area as expressed in the Town's Code as a stated goal.

K. Kubly stated that the shed would be built to limit the impact on the surrounding environment, with solar heating, built to an aesthetic that is befitting location on a prairie, similar to the cluster buildings located at the Aldo Leopold Legacy Center. There would be electrical service to the structure, but the decision has not been made as to whether that service will be above or below ground. B. Elkins made a motion to forward the JSD design to the Town Engineer for review; seconded by D. Sherven. Jenkins agreed to forward the engineering plans directly to Vierbicher as an email attachment so that they could review them with their CAD software. It was noted that the Village's approval of the location and their indication that the driveway is under the purview of the Town that approval by the ETZ Committee would be unnecessary. D. Hustad recommended that the next Town Board agenda should include the results of the Engineering review performed by Vierbicher Associates. Motion

carried. It was recommended, without objection, that JSD consult with Dave Anderson of NGFD during the construction phase of this project.

On 090323 Kris and Penny Kubly met with building inspector Mike Fenley and Deputy Clerk Wright at the Town Office to review their preliminary building plans as follows in the notes taken by Wright:

Mr. Kubly presented architectural plans for two proposed structures: a 60' X 40' workshop (non-commercial) and a 36' X 24' office with bathroom (non-commercial). The two structures will have a rainwater collection trough that acts as a covered walkway between the two. The length of this breezeway/water collection system is 12'. M. Fenley reviewed the ETZ guidelines for structures in the A-P. Because of its location the Village first decides if they want to provide water and sewer. If they don't exercise that option now the Kubly's will need to provide well and septic. M. Fenley stated that the Village can require hookup to their services at the Village's choosing.

The Kubly's stated that they plan on having solar panels positioned on the south side of the roof which the Building Inspector did not find problematic. They are also interested in placing a small monopole wind generator near the two buildings. Fenley stated that the Kubly's will need to review the Village's Ordinance, not the Town's. Fenley noted that the total cubic footage of both structures may exceed the 25,000 ft<sup>3</sup> maximum defined in Permitted Use within the A-P. Fenley noted that even if the breezeway/water collection connection is discarded the two buildings may exceed the density for this classification. Fenley requested that the Kubly's calculate the total volume of both structures so that he can review the ETZ Ordinance.

Fenley reviewed a contour and aerial map of the proposed location and preliminarily thought that it would fulfill the suggested ridgeline standard established by the Town and the setback standards set by the Village through the ETZ. The Kubly's asked about the status of their driveway refund. Wright stated that the Clerk/Treasurer had been working on the total charges for engineering costs from Vierbicher. Penny Kubly stated that she had paid those charges and had been told that Mike Fenley had not provided Salter with a final inspection report with a request for refund. Fenley noted that he would not do the final inspection; that would have been conducted by the engineer from Vierbicher Associates. Fenley agreed to speak to the engineer and Wright agreed to speak with the Clerk/Treasurer.

Kris Kubly will email Wright the architectural renderings. Wright agreed to print color copies of the same for Fenley.

**Conclusions:** Although the property owned by Bahler in 1997 at the time of the Land Division Ordinance totaled 53.03 acres and had an unique tax parcel number, it would appear that the soul split was consumed by the existing home. If it could be argued that parcel 165.0000 has a building site due to annexation of the existing Bahler home into the Village a question arises as to whether the open space requirement would still need to be fulfilled and if so how many acres would be required. Furthermore, if the proposed structure at the end of the engineered driveway is interpreted as either a residence (a kitchen, bedroom, and bathroom would argue strongly for this interpretation) or a business (the storage of ATV equipment and adjoining office would argue strongly that possibility) is there a building site available or open space available to fulfill the requirements of the Ordinance?

If the Plan Commission decides that the property has a building site because the aforementioned home was annexed and does not need a deed restriction for open space and because the tax parcel existed prior to date of Ordinance, then no identification of open space would be required. However, if the settler's cabin that has been discussed at previous Plan Commission meetings is restored and if that property is on parcel 165.0000 or 165.2000, then it cannot have bedrooms or be used commercially.