

## Attorney: Landowners must know their rights

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**UPPER THUMB** — People must know their rights to just compensation when negotiating with ITCTransmission, stresses one Michigan eminent domain attorney.

While ITCTransmission “is a pretty responsible, serious company” that is very concerned with not affecting the environment, Alan Ackerman, a Bloomfield Hills attorney who has been exclusively representing landowners in eminent domain and condemnation cases for more than 30 years, said his concern, and that of his local clients — which include three large farms, one located in Sanilac County and two in Tuscola County — is the effects the Thumb Loop will have on their farming operations.

He said he is filing appearances on behalf of those three landowners to ensure lines are placed in an area of their property that least impacts their business, “because farming is their business.”

“They don’t look at this like a recreation issue — this is serious business,” Ackerman added.

A route that goes through the middle of a farm can have negative repercussions, and in some instances, it can destroy farming operations if it hinders irrigation systems, he said.

While there are some large farms that will have to have lines through the property, it’s possible to create less of an impact for some farmers by siting the lines elsewhere on the property.

Ackerman said he has filed appearances with the Michigan Public Service Commission (MPSC) on behalf of his clients, not to stop the project, but to make sure that if it’s on one of his client’s properties, it’s sited in an area that will do the least amount of damage.

He said once the MPSC takes action, appraisals will be done and then condemnings will take place, as ITC will have the ability to condemn land via eminent domain.

“Once MPSC grants ITC the power to condemn, the owners are going to be individually challenging the just compensation offers on their property. Sometimes ITC makes good offers. In some cases, the vast majority of offers are OK, (in) other (cases), more than 50 percent object to the offer,” Ackerman said.

Eminent domain is the power to force the sale of land at fair market value. The problem that crops up in many instances, Ackerman said, is determining what is the fair market value and what is just compensation.

If an offer is too low, for whatever reason, and ITC does not understand the impact that will result, then attorneys like Ackerman are brought on to make the landowner’s case, he said.

Ackerman said there have been instances farmers have been able to work with ITC to have routes slightly changed. He said it may be possible ITC will meet with Thumb landowners and make offers that will make everyone happy. It’s also possible the opposite will happen and landowners will negotiate a different offer or end up disputing ITC’s final offer.

If someone has a legitimate claim, it’s possible they “can take ITC on and be successful,” he said. However, if someone doesn’t have a valid claim, they will not be successful.

“You shouldn’t do it just to be emotional and fight the ITC — there’s a public use in this,” Ackerman said.

MPSC currently is in the stage of finalizing the route of the Thumb Loop. Once that is finished, ITC will get appraisals and make offers based on the appraisals, Ackerman said. He said if someone disputes an offer, the landowner can negotiate a resolution with ITC. If a resolution cannot be reached, a landowner can file a lawsuit.

It's important landowners know the MPSC is willing to listen if someone can factually prove there's a better route, Ackerman said. The best way to do this is to get a lawyer and file a petition to intervene by showing the better route.

In respect to his clients in the Thumb, Ackerman said they are more concerned about where towers/lines are going to go on their property so they don't lose the ability to farm.

He said people need to realize that the project is moving forward, and there's no changing that. So landowners need to focus on how to best move forward.

"That's the real issue," Ackerman said.

While Ackerman's first suggestion is for landowners to retain, or at least consult with, a lawyer, the following is a list of tips from Ackerman previously reported in the Monroe Daily News for those who shy from attorneys:

- Keep quiet, get the offer in writing and figure out what the basis of the offer is.

- Figure out exactly where the pipeline, wires, etc. are being installed. How will this affect the property next year? In 20 years? Does it destroy the farm tiles?

- Make sure you know what your local government mandates.

- Get everything in writing, make sure you can understand it and make sure it's specific. Do not sign anything until you have read it thoroughly and understand it.

- Keep the property well maintained.

- Keep in mind the people who come to negotiate the use of your property are professionals at this. • Get an independent assessment.

- Get exact definitions.

### **ITC: Eminent domain a last resort**

Once ITC Transmission begins meeting with landowners, following the MPSC's approval and the finalization of the route, the goal is to reach a mutually beneficial agreement with each landowner, said ITC Transmission Senior Capital Communications Specialist Joe Kirik.

"We begin the negotiation process with them, and there are several steps," Kirik said. "Initially, there's a survey (where we) take a look at the property. It's all based on discussions and negotiations with landowners. Throughout the whole process — siting, design and construction — the goal is to work with landowners to minimize the impacts to them and their property."

The discussions are necessary for ITC to get a feel for each landowner's individual situation and what his or her concerns are in regard to where lines and structures will be sited, Kirik said.

He noted while ITC wants to negotiate with landowners, it has to be on a reasonable basis.

In most cases, the process works well and a mutually beneficial negotiated agreement is reached with each landowner, he said.

"There are situations, occasionally, where we reach an impasse. And in those situations, ITC does have

the authority to file condemnation actions per Michigan law — but we only do that as a last resort,” Kirik said.

That is because ITC will have to come on the property from time to time for maintenance, and the company wants to be good neighbors and be a positive force in the community, he said.

“We view the landowners as partners,” Kirik said. “ ... This is a very important point to us — we really do prefer to arrive at negotiated agreements.”

The percentage of how many instances ITC has had to obtain easements by eminent domain varies from project to project, but overall, it is low, he said.

“We want to be sensitive to each landowner’s particular situation and what the situation is on their property — we want to understand what their concerns are and figure out the best solution in each case for routing the line,” Kirik said.

Sometimes there is leeway in terms of placing structures, and the whole point of working with landowners is to have a cooperative process so ITC understands a landowner’s concerns and works with them to arrive to a solution, he said.

“We don’t approach it from the standpoint that we have the power to condemn (land) — that’s not our approach at all,” Kirik said.

In regard to some concerns that large transmission towers will decrease area property values, overall, studies generally show a transmission line will not affect the long-term value of a property, he said.

“But as any real estate person can tell you, property values are determined by a complicated set of factors,” Kirik said, noting there is a variety of factors that determine property values. “But studies we’ve seen generally show that a transmission line does not affect the long-term value of a property. Again, it’s a negotiated process. (We) start with a value based on the fair market value of the land — that’s the negotiating starting point.”

Kirik said ITC understands landowners have rights in terms of just compensation.

“We look at each individual case and we come up with what we feel is a fair offer reflecting fair market value,” he said. “It’s a negotiating process and we want to keep an open mind. We want to listen to landowners’ points of view and arrive at an agreement.”

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