

## Power to the people

Wind farm project will help state meet renewable energy goals, but will disrupt farm businesses

### Eminent Domain

By Carol Lundberg

A year ago, if you'd have asked Bloomfield Hills attorney Alan Ackerman what a farmer's dream is — though a year ago, there was no reason to ask such an obscure question — he'd have guessed: Sunshine? Plenty of rain? A long, warm summer?

Today he knows the answer: A straight mile.

Or so say his clients, seven farmers and property owners in the Michigan Thumb area who suddenly find themselves facing condemnation on their properties to make way for a 140-mile electrical transmission line. The line is being built to carry power from new wind farms in the Thumb to the more populous Southeast Michigan.

Ackerman is no stranger to condemnation and eminent domain. He represented property owners in *Wayne County v. Hatchcock*, a case that overruled the Pole-town land taking. Before that, he represented some 20 businesses in their valuation disputes in Poletown.

But this is different, he said. What makes it different is that the farmers will continue to work around the power line right of way, but their businesses will be impacted dramatically and permanently. (See "Winds of change," page 16.)

"It's essential that there is an understanding of what that land is really worth," Ackerman said.

The lines are part of the International Transmission Co., or ITC, Thumb Loop Project, which came about after the state passed the Clean, Renewable and Efficient Energy



**Bloomfield Hills attorney Alan Ackerman is working in Michigan's Thumb region, representing property owners who are facing condemnation to make way for wind power electrical lines.**

Act in 2008, said Joe Kirik, ITC spokesman.

The Act mandates 10 percent of Michigan's energy come from renewable sources. As a result of the law, the state created the Wind Energy Resource Zone Board to identify regions with the best wind energy potential. The Thumb Loop project is in Region 4.

On Aug. 30, 2010, ITC applied to the Michigan public Service Commission for expedited siting approval. In February 2011, MPSC granted the expedited siting certificate authorizing ITC to construct the line in Region 4.

The project calls for about 140 miles of double-circuit, 345,000-volt lines and four substations.

According to the ITC website, this loop will run through Tuscola, Huron, Sanilac and St. Clair counties, and serve as the backbone of the system.

A report on the ITC website says that when the company was developing its transmission plan, it was mindful of crossing cropland, and the possible impact on farms and fields, and "looked to locate the line along field borders, fence rows, non-tilled borders or waterways. We also attempted to span across fields where possible, thus avoiding the need to place a structure within a tilled area."

The tubular steel monopoles to support the lines will be located about every 900 feet, about six per mile. Steel lattice towers will be constructed at the angles. The height of the overhead ground wires and transmission wires will vary between 100 and 150 feet, according to ITC. The right-of-way width will be about 200 feet.

Rodger A. Kershner of Howard & Howard Attorneys PLLC in Royal Oak has repre-

sented property owners and developers at nearly every step of the wind farm development process.

Early on, he represented one of the developers, Renewable Energy Systems America, on a wind farm project in the Thumb.

Then a group of 70 property owners who were being asked by another developer to lease land contacted Kershner, so he represented them as well.

Now, he's representing a group of about 100 of the 435 property owners who have property along the loop's path, to help them negotiate their agreements with ITC.

In all, he's representing owners of some 12,000 acres along the loop.

"We're trying to do this in some organized way that will protect the property owners' rights," he said.

The wind farm developers who are leasing from property owners wanted to "ensure that the property owners are being well treated," Kershner said. And those property owners are voluntarily leasing their land to the developers in exchange for annual payments.

But the farmers and property owners along the transmission lines' paths are a little more anxious.

That's partly because their business activities will be disrupted. But also they're anxious because they're negotiating a one-time compensation for the acquisition of the right of way.

"They will have to tolerate some large structure in the middle of their property," Kershner said. "For a farmer, it's more than an inconvenience. And there's nothing voluntary about it. There is some resentment. The farmers fear a lack of opportunity to negotiate their interests."

It's more than an inconvenience, Ackerman said. The poles are going 40 feet deep underground, causing a concern about ground water.

It's likely that the first activity will be surveying and soil boring. Access to the property, he said, is likely to start before the growing season is done.

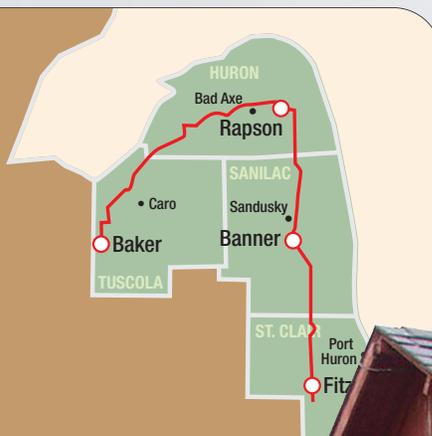
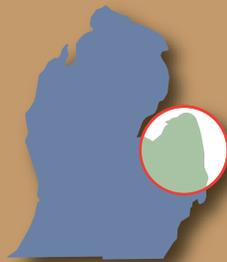
"So we're working on negotiating right-of-entry agreements" to compensate farmers for any damage to crops, Ackerman said.

As important as the land-impact considerations are, Ackerman said, the real problem the property owners face right now is the market for farm property. It's been quite the opposite of the residential real estate market in that values are rising.

The Federal Reserve Bank of Chicago

## THUMB LOOP

Transmission line project



The Thumb Loop Project calls for the construction of approximately 140 miles of double circuit, 345,000 volt (345 kV) lines and four new substations that will serve as a "backbone" for the Thumb region. The new system will be constructed in stages, with the first segment, the western side of the loop from the new Baker substation in Tuscola County to the new Rapson substation in Huron County, tentatively planned to enter service in late 2013. The remainder is targeted for completion by 2015.

reported earlier this year that Michigan land prices increased about 10 percent between October 2009 and October 2010. More than half — 52 percent — of crop acres are controlled through leasing arrangements, with 81 percent of those on a cash-rent basis, reported the Michigan Farm Bureau in February.

Ackerman said that, in five years, values have climbed by some 35 percent.

The reason, he said, is the global demand for ethanol and the sugar shortage, which makes Michigan's sugar beet farm land very valuable.

Complicating the assessment of farm land is that transactions are not always recorded in a way that reflects the full value of the land, Ackerman said.

Much of the land is leased, as reported by Farm Bureau. And some sales are confidential, so the values are not recorded, which could lead to comparables being too low, he added.

ITC has contacted the 224 property owners on the west side of the loop in Tuscola County and a little bit of Huron County first, Kirik said. That side of the loop is scheduled to go into service in 2013. The east side of the loop is scheduled to be online in 2015.

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