

**BEFORE  
THE OHIO POWER SITING BOARD**

**In the Matter of the Application of Duke :  
Energy Ohio, Inc., for a Certificate of :  
Environmental Compatibility and Public : Case No. 16-0253-GA-BTX  
Need for the C314V Central Corridor :  
Pipeline Extension Project :**

---

**KENWOOD MALL, LLC'S  
PETITION FOR LEAVE TO INTERVENE**

---

Pursuant to O.A.C. 4906-2-12(A)(2), Kenwood Mall, LLC ("Kenwood Mall") respectfully petitions the Ohio Power Siting Board (the "Board") for leave to intervene in the above captioned proceeding. Kenwood Mall has a significant interest in the outcome of this proceeding; Kenwood Mall's interests are not adequately represented by existing parties; Kenwood Mall will contribute to a just and expeditious resolution of the issues before the Board; and Kenwood Mall's intervention will neither delay the proceeding nor prejudice any existing party. A Memorandum in Support of this Petition is attached hereto for the Board's consideration.

Respectfully submitted,

s/ Richard B. Tranter  
Richard B. Tranter, Esq. (0031226)  
Kevin M. Detroy, Esq. (0084234)  
DINSMORE & SHOHL LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202  
Phone: (513) 977-8200  
Fax: (513) 977-8141  
Email: richard.tranter@dinsmore.com  
kevin.detroy@dinsmore.com

*Attorneys for Kenwood Mall, LLC*

**BEFORE  
THE OHIO POWER SITING BOARD**

**In the Matter of the Application of Duke :  
Energy Ohio, Inc., for a Certificate of :  
Environmental Compatibility and Public : Case No. 16-0253-GA-BTX  
Need for the C314V Central Corridor :  
Pipeline Extension Project :  
:**

---

**MEMORANDUM IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE**

---

**I. INTRODUCTION**

Kenwood Mall, LLC (“Kenwood Mall”) petitions the Ohio Power Siting Board (the “Board”) for permission to intervene as a party who will be directly and significantly affected by the outcome in this matter. Duke Energy Ohio, Inc. (“Duke”) filed an Application for Certificate of Environmental Compatibility and Public Need for the C134V Central Corridor Pipeline Extension Project with the Board requesting approval to construct a natural gas pipeline through numerous communities in the Cincinnati area (the “Pipeline Project”). As currently proposed, the pipeline, measuring 20 inches in diameter and operating at 400 psig, will extend some 13 or 14 miles along one of two alternative routes commencing at a location near the intersection of Hamilton, Warren, and Butler Counties and terminating in either Norwood (the “Alternative Route”) or Fairfax (the “Preferred Route”).

Kenwood Mall owns and operates Kenwood Towne Centre, a major regional shopping center located in Sycamore Township, Hamilton County, Ohio (the “Towne Centre”). The Towne Centre covers approximately seventy acres, and is bounded by East Galbraith Road to the north, I-71 to the east, Montgomery Road to the south, and Kenwood Road to the west. The

Towne Centre is an enclosed shopping center with approximately 180 retail tenants, including several department stores, and restaurants, among others.

The Towne Centre is situated along the Preferred Route of the Pipeline Project. As depicted in **Exhibit A** attached hereto, the pipeline would substantially encroach upon the Towne Centre property, disturbing portions of the Towne Centre's parking field, landscaping areas, internal drives, utility lines and facilities, and access points on Kenwood Road. Additionally, it would limit Kenwood Mall's ability to develop the Towne Centre in the future. Furthermore, the inherent nature of a gas pipeline would introduce a new risk to the Towne Centre in the form of a potential pipeline failure.

## **II. CASE HISTORY**

On September 13, 2016, Duke filed with the Board an Application for Certificate of Environmental Compatibility and Public Need for the Pipeline Project (the "Application"). On January 20, 2017, prior to a determination by the chairman of the Board whether to accept the Application as complete, *see* O.A.C. 4906-3-06(A), Duke filed an Amended Application for Certificate of Environmental Compatibility and Public (the "Amended Application"). In the Amended Application, Duke proposed adjustments to the pipeline routes, along with other changes. Duke subsequently filed supplements to the Amended Application on February 13, 2017 and March 3, 2017, and a correction to the Amended Application on February 24, 2017.

On March 3, the Board advised Duke that the Amended Application had been accepted as complete. On March 30, 2017, Duke notified the Board that service on local officials of certified copies of the accepted Amended Application was completed on March 23, 2017.

On April 13, 2017, the Administrative Law Judge entered an order which, among other things, set a deadline for the filing of the intervention petitions as the later of: (a) the 30<sup>th</sup> day following the publication of the initial notice under O.R.C. 4906.06(C), or (b) May 31, 2017.

### **III. LEGAL STANDARD**

The Board shall grant a petition for leave to intervene if the petitioner can show good cause. O.A.C. 4906-2-12(B). “In deciding whether to permit intervention ... the board ... may consider:

- (a) The nature and extent of the person’s interest.
- (b) The extent to which the person’s interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.”

O.A.C. 4906-2-12(B)(1).

### **IV. ARGUMENT**

For the following reasons, Kenwood Mall has good cause to intervene in this matter, and the Petition should therefore be granted.

#### **A. Kenwood Mall has a Direct and Substantial Interest in the Outcome of these Proceedings**

The first factor that the Board may consider is the nature and extent of the Petitioner’s interest. Kenwood Mall has a compelling interest in the outcome of this matter because the Towne Centre is situated directly in the path of the Preferred Route. If the Board were to approve the Preferred Route, some 1,700 feet of the pipeline would be installed on the Towne Centre property.

The Pipeline Project raises several concerns for Kenwood Mall. First, Kenwood Mall is justifiably concerned for the safety of the many persons—approximately 40,000 per day on average—who visit the Towne Centre. Due to the inherent threat of harm created by the pipeline—both real and perceived—its presence could dissuade some from visiting the Towne Centre, which would have economic consequences for Kenwood Mall, its tenants, and the employees of both.

Second, construction of the pipeline on the Towne Centre would disrupt three of the Towne Centre's access points along Kenwood Road and would adversely impact the flow and circuitry of vehicular and pedestrian traffic on the site. The construction would also disrupt utility lines and facilities, resulting in the wasteful removal of landscaping and other important features from the Towne Centre.

Third, but not finally, the Pipeline Project would substantially limit Kenwood Mall's ability to develop the Towne Centre in the future. If the Pipeline Project encroaches upon Kenwood Mall's property, it would prevent Kenwood Mall from being able to further develop and improve the Towne Centre within the proposed easement area, as proposed (i.e., 50 feet in width).

As discussed above, Kenwood Mall clearly has a direct and substantial interest in the outcome of these proceedings.

**B. Kenwood Mall's Interests in this Matter are not Adequately Represented by the Current Parties**

The second factor the Board may consider is the extent to which the Petitioner's interests are represented by existing parties. As of May 4, 2017, the online information repository for this case maintained by the Public Utilities Commission of Ohio identified the following as parties of record:

Duke Energy

Public Utilities Commission of Ohio

Anthony and Joan Boiano

Thomas A. and Patricia H. Kreitingner

In addition to the foregoing parties of record, the following municipalities and townships have noticed their intention to intervene (collectively, the “Public Intervenors”):

Amberley Village, Ohio  
Scott Lahrmer, Village Manager

Board of County Commissioners of Hamilton County, Ohio  
Jeff Aluotto, County Administrator

City of Blue Ash  
David Waltz, City Manager

City of Cincinnati  
Harry Black, City Manager

City of Madeira  
Melisa Adrien, Mayor

Sycamore Township  
Thomas J. Weidman, President, Board of Township Trustees

Village of Evendale, Hamilton County  
Richard Finan, Mayor

Village of Golf Manor, Ohio  
Ron Hirth, Mayor

Finally, the following three parties have filed petitions for leave to intervene which are currently pending before the Board (collectively, the “Private Intervenors”):

Neighbors Opposed to Pipeline Extension, LLC

Pleasant Ridge Community Council

## 10149 LLC

Kenwood Mall's interest as the owner and operator of a multi-tenant regional shopping center will not be adequately represented by the current parties of record or the intervening parties.

Duke is the applicant and proponent of the Pipeline project, and therefore does not represent the interests of Kenwood Mall.

The Public Utilities Commission of Ohio, which includes the Board, is charged with evaluating and adjudicating the Pipeline Project, not representing the interests of any particular party.

The individual parties are private individuals who will be expected to represent their respective personal interests.

Similarly, the Public Intervenors will represent the concerns of their respective communities.

Finally, the Private Intervenors are organizations primarily comprised of individual residents and possess separate and unique real estate interests. Although the organizations arguably represent the interests of broader groups, they do not represent the particular interests of Kenwood Mall or the Towne Centre's tenants.

Due to the sheer number of tenants and tenants' employees present in the Towne Centre, in addition to visitors to the Towne Centre on a daily basis, the consequences of a pipeline failure on the Towne Centre property could significantly impact members of many communities throughout the greater Cincinnati area. Kenwood Mall, therefore, represents many interests beyond its own.

Furthermore, Kenwood Mall, as the owner of the Towne Centre, is the only party in a position to appreciate the nature and scope of the disruption to the Towne Centre, its visitors and tenants (and employees of tenants), in the event the Pipeline Project was approved.

**C. Kenwood Mall will make Important Contributions to a Just and Expeditious Resolution of this Matter**

The third factor the Board may consider is whether the Petitioner will contribute to a just and expeditious resolution of the matter. Kenwood Mall's contribution will indeed contribute to a just and expeditious resolution of this matter in several ways.

First, Kenwood Mall's involvement will be important because the Towne Centre property will be directly affected by the Pipeline Project in the form of significant economic and physical adverse impacts. Thus, a full record of the impacts of the Pipeline Project would be incomplete without Kenwood Mall's participation.

Second, Kenwood Mall has a unique real estate interest, which, by its very nature, reflects a diverse group of other interests beyond just its own. Many other community constituents—visitors, tenants (retailers, shop owners, and employees of each), contractors, and agents—will also be impacted by the Pipeline Project's effect on the Towne Centre. It is imperative that these voices be heard, and Kenwood Mall will be positioned to speak on the collective behalf of these other constituents.

Relatedly, Kenwood Mall's participation in these proceedings will obviate the need for any of the Towne Centre's tenants to intervene because, as discussed below, Kenwood Mall would sufficiently represent their interests.



**D. Kenwood Mall's Participation in this Matter will neither Unduly Delay the Proceeding nor Unjustly Prejudice an Existing Party**

Far from causing undue delay, permitting Kenwood Mall to intervene would allow for a more thorough review of the issues that the Board must consider. As the owner and operator of the largest regional shopping center in the greater Cincinnati area, Kenwood Mall will bring a perspective to the proceedings that would not be represented by the current parties of record. Further, this Petition has been filed within the period prescribed by the Administrative Law Judge.

Finally, Kenwood Mall's participation would not unjustly prejudice any party. Rather, its participation would advance the central objective of these proceedings to fully and fairly evaluate all issues relevant to the Pipeline Project.

**V. CONCLUSION**

For the foregoing reasons, Kenwood Mall has demonstrated good cause to intervene in these proceedings, and thus Kenwood Mall's Petition for Leave to Intervene should be granted.

Respectfully submitted,

s/ Richard B. Tranter  
Richard B. Tranter, Esq. (0031226)  
Kevin M. Detroy, Esq. (0084234)  
DINSMORE & SHOHL LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, Ohio 45202  
Phone: (513) 977-8200  
Fax: (513) 977-8141  
Email: richard.tranter@dinsmore.com  
kevin.detroy@dinsmore.com

*Attorneys for Kenwood Mall, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petition for Leave to Intervene was served on all parties who have electronically subscribed to this case through the Docketing Information System of the Public Utilities Commission of Ohio and the Ohio Power Siting Board on this 4th day of May, 2017. The docketing division's e-filing system will electronically serve notice of the filing of this document on the following parties:

Kristen Ryan  
Duke Energy  
139 East Fourth Street 1202 Main  
Cincinnati OH 45202

Adele M. Frisch  
Duke Energy  
139 East Fourth Street  
Cincinnati OH 45202

Jeane W. Kingery  
Duke Energy  
155 East Broad St Suite 2020  
Columbus OH 43215

Carys Cochern  
Duke Energy  
155 East Broad St 20th Floor  
Columbus OH 43215

Adele M. Frisch  
Duke Energy  
139 East Fourth Street  
Cincinnati OH 45202

Dianne Kuhnell  
Duke Energy Business Services  
139 E. Fourth Street  
Cincinnati OH 45202

Emily Olive  
Duke Energy Ohio  
155 East Broad St 20th Floor  
Columbus OH 43215

Felicia D. Burdett  
Public Utilities Commission of Ohio  
180 E. Broad Street  
Columbus OH 43215

Debra Hight  
Public Utilities Commission of Ohio  
180 E. Broad Street  
Columbus OH 43215

Matt Butler  
Public Utilities Commission of Ohio  
180 E. Broad St.  
Columbus OH 43215

Donielle M. Hunter  
Public Utilities Commission of Ohio  
180 East Broad Street 11th Floor  
Columbus OH 43215

Vesta R. Miller  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus OH 43215

Staff, Docketing  
Docketing  
180 East Broad Street 11th Floor  
Columbus OH 43215

Devin D. Parram  
Bricker and Eckler  
100 South Third Street  
Columbus, OH 43215  
*Attorney for The Jewish Hospital*

R. Douglas Miller  
Donnellon, Donnellon & Miller LPA  
9079 Montgomery Road  
Cincinnati OH 45242  
*Attorney for Sycamore Township*

Mark T. Keaney  
Calfee, Halter & Griswold LLP  
1200 Huntington Center 41 South High Street  
Columbus OH 43215  
*Attorney for the City of Cincinnati*

Terrence M. Donnellon  
Donnellon, Donnellon & Miller, LPA  
9079 Montgomery Road  
Cincinnati OH 45242  
*Attorney for the Village of Golf Manor, Ohio*

Joseph E. Olikier  
IGS Energy  
6100 Emerald Parkway  
Dublin, OH 43016  
*Attorney for IGS Energy*

Kevin K. Frank  
Wood & Lamping LLP  
600 Vine Street, Suite 2500  
Cincinnati OH 45202  
*Attorney for Amberley Village*

Andrew J. Helmes  
City of Deer Park  
7777 Blue Ash Road  
Deer Park, OH 45236  
*Attorney for City of Deer Park*

Roger E. Friedmann  
Assistant Prosecuting Attorney  
230 E. Ninth street Suite 4000  
Cincinnati OH 45249  
*Attorney for the Board of County Commissioners of Hamilton County, Ohio*

Bryan E. Pacheco  
Dinsmore & Shohl LLP  
255 East Fifth Street Suite 1900  
Cincinnati OH 45202  
*Attorney for the City of Blue Ash, Ohio*

Timothy M. Burke  
Micah E. Kamrass  
225 West Court Street  
Cincinnati, Ohio 45202  
*Attorneys for the Village of Evendale*

Gregory G. Laux  
Kohnen & Patton LLP  
PNC Center, Suite 800  
201 East Fifth Street  
Cincinnati, Ohio 45202  
*Attorney for Pleasant Ridge Community Counsel*

James Yskamp  
Fair Shake Environmental Legal Services  
159 South Main Street Suite 1030  
Akron OH 44308  
*Attorney for Neighbors Opposed to Pipeline Extension, LLC*

R.L. Kent Bucciare  
The Bucciare Firm  
2856 SW 51<sup>st</sup> Street  
Cape Coral, FL 33914  
*Attorney for 10149 LLC*

Brian W. Fox  
Graydon Head & Ritchey LLP  
312 Walnut Street Suite 1800  
Cincinnati OH 45202  
*Attorney for the City of Madeira*

Mark G. Arnzen Jr.  
Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202  
*Attorney for Columbia Township*

Patrick G. Ross  
City of Reading  
1000 Market Street  
Reading, OH 45215  
*City of Reading Safety Service Director*  
*David T. Stevenson, Law Director*

The following parties have not been served via the email notice and have been served by regular U.S. Mail on the same date indicated above:

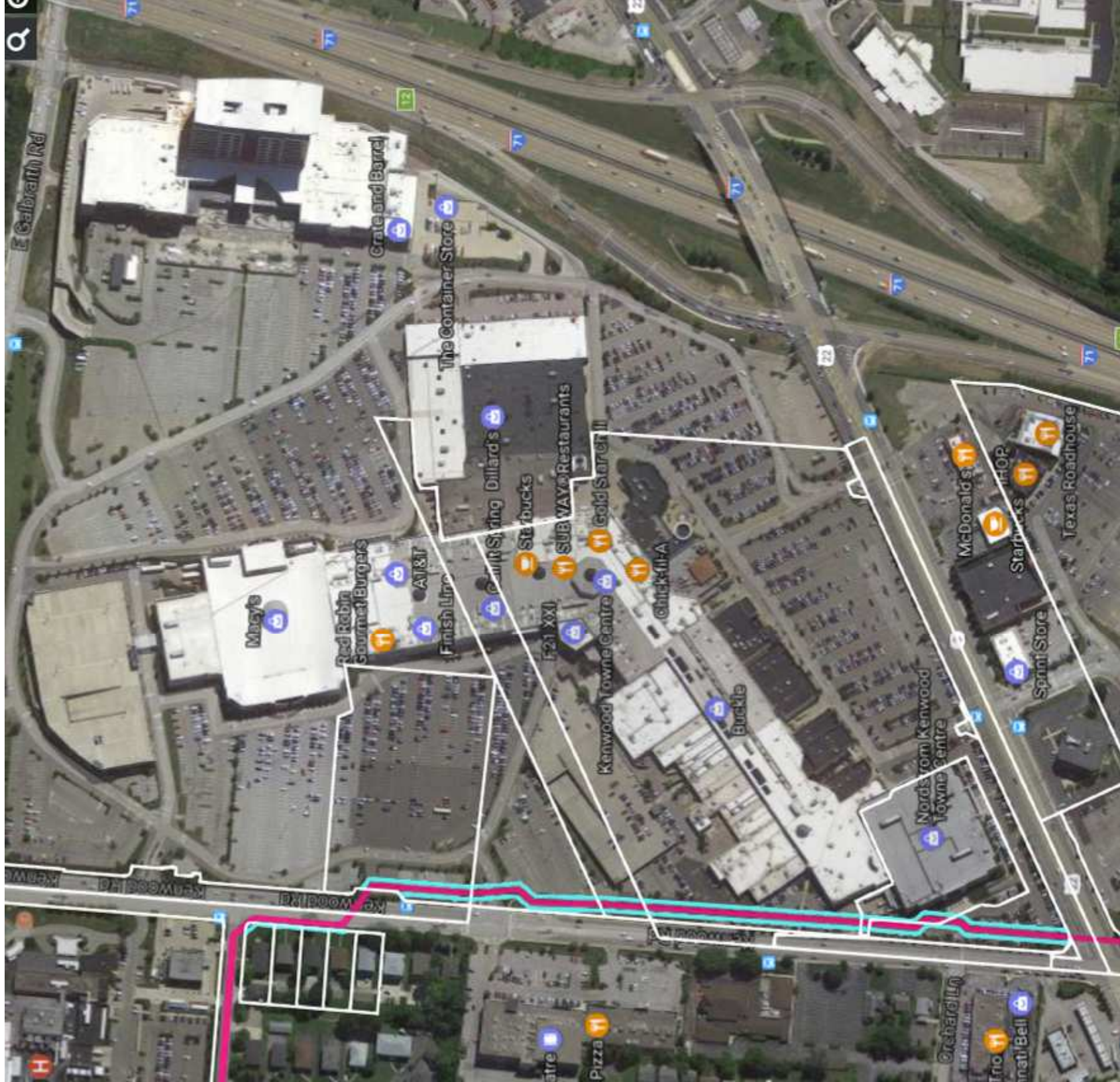
Anthony and Joan Boiano  
9528 Bluewing Terrace  
Blue Ash, Ohio 45241

Thomas A. and Patricia H. Kreitinger  
6150 St. Regis Drive  
Cincinnati, Ohio 45236

s/ Richard B. Tranter  
Richard B. Tranter

**Exhibit A**

*(see attached)*



E Gabrath Rd

Macey's

Red Robin  
Savory Burgers

Crate and Barrel

The Container Store

Finish Line

Chili's

Starbucks

SUBWAY Restaurants

Kenwood Towne Centre

Chick-fil-A

Buckle

Nordstrom Kenwood  
Towne Centre

McDonald's

Starbucks

Sprint Store

Texas Roadhouse

Richardson

Frio

Verizon Bell

atre

Pizza



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/4/2017 2:18:12 PM**

**in**

**Case No(s). 16-0253-GA-BTX**

Summary: Petition for Leave to Intervene electronically filed by Mr. Richard B Tranter on behalf of Kenwood Mall, LLC