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VIA EMAIL ([council@ci.scandia.mn.us](mailto:council@ci.scandia.mn.us))

Mayor Randall Simonson  
City Council Members  
    Councilmember Chris Ness  
    Councilmember Sally Swanson  
    Councilmember Jim Schneider  
    Councilmember Dan Lee  
City of Scandia  
14727 - 209th Street North  
Scandia, MN 55703-8503

Re: Zavoral Mining and Reclamation Project  
Our File No.2452.001

Dear Mayor Simonson and Councilmembers:

I write on behalf of Jim and Kathleen Zavoral, the owners of the property of the proposed Zavoral Mining and Reclamation Project (the "Project"). The purpose of this letter is to urge the Council to grant the Conditional Use Permit (the "CUP") sought by Tiller Corporation ("Tiller"). The Zavorals fully support this Project as it provides a very significant benefit to their neighborhood and the community of Scandia. Obviously, there is a benefit to them personally as well. It is important to note, however that this Project is limited in scope. This is intentional and reflects their desire that the primary purposes of this Project be balanced in a way that has a positive effect at its completion. The mining interest in bringing this valuable material to market is balanced with the reclamation interest in assuring that upon reclamation the Project site ties back into the area in a way that substantially improves the neighborhood and allows it to be assimilated into surrounding properties.

This Project by combining a limited amount of mining with the site reclamation provides a unique opportunity to reclaim this property that will not be able to be duplicated in the future. Notwithstanding the benefits of this unique opportunity, it is also important that the Council considers Zavorals' interests as the owners of this property. When the Scenic Easement was acquired nearby the Project area was not included. The mining area is wholly outside the scenic easement area acquired as a buffer for the Wild and Scenic St. Croix River. The Project does include reclamation grading within the scenic easement, but only to reclaim the previously mined area therein. The mining area is not on property that has been acquired for scenic easement and thus is not restricted in use by the Park Service programs.

Tiller's application seeks approval of the mining use which is under the City's Development Code and Comprehensive Plan in effect at the time of the submission of the application for the conditional use. This is the correct legal standard that has been consistently and correctly applied during this process for reasons outlined by the City Attorney, the attorney for Tiller and the undersigned in my letter to the City Council dated May 26, 2011. The Zavorals' property has been tied up in an environmental review process for four years while the environmental performance of this Project was scrutinized very carefully. As a consequence of that scrutiny, the City has produced an Environmental Impact Statement ("EIS") that clearly describes the basis upon which the City Council may conclude (and in fact must conclude) that the Project meets the City's Conditional Use Permit standards described in its ordinance. City Staff has presented an analytical staff report describing in great detail the standards applicable and the manner by which those standards are met at multiple times during the Planning Commission and City Council's review of the Project. After the extensive testimony provided by the public and Project opponents, Staff has continued to recommend approval. It is axiomatic in state law that the City must have a rational basis for its actions in considering the CUP request. This rational basis is met when the City acts in accordance with adopted ordinance standards. Staff has described in detail how these standards are met by the Project. When considering the criticisms of the Project, it is also important that the City Council recognize the significant distinction between expressions of unsubstantiated fears and concerns as contrasted with objective analysis of Project impacts. The Minnesota courts have made it clear that a rational decision on a permit is not well founded if it is based only on projected fears and concerns. Stated another way a criticism "the Project might..." is not rational; the criticism "the Project will..." could support a rational decision. When the Council reviews the record of the proceedings by the Planning Commission and the information gathered in the EIS, this distinction is well demonstrated.

It is also important to bear in mind that in making a land use permitting decision, as opposed to review of the EIS, the Project's qualities to be evaluated are not the "worst case scenario" that is evaluated in the EIS, but rather the mitigated Project with reasonable conditions imposed through the conditional use permit. Thus, here by applying the conditions described in the Staff Report the Council can readily and must conclude that the CUP standards are met.

Quite frankly, it would be clearly arbitrary and illegal not to approve the CUP. A denial of the CUP will result in a substantial financial loss for my clients and a denial of their rights as the owners of the property on which this Project is to be located.

On behalf of the Project landowners, we request that the City apply these standards to the Project. As shown in the city staff report and submittals from Tiller Corporation there is a solid, rational basis for approving the Project. There is no legal basis for denial. For these reasons, the Zavorals request that the City approve the Conditional Use Permit so that this important Project can commence and be promptly completed.

Very truly yours,

A handwritten signature in black ink that reads "Bruce D. Malkerson". The signature is written in a cursive, slightly slanted style.

Bruce D. Malkerson

c: Kristina Handt, City Administrator ([k.handt@ci.scandia.mn.us](mailto:k.handt@ci.scandia.mn.us))  
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