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**Sent:** Monday, December 11, 2023 12:26 PM

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**Cc:** Clerks <clerks@wilmot.ca>

**Subject:** November 27th Wilmot Council Meeting Follow-up

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Mayor Salonen, Wilmot Council, and Wilmot Township Staff,

By now you will have seen the letter from Bennett Jones the legal counsel for Nachurs Alpine Solutions raising serious concerns about development approvals being sought from Minister Calandra by Wilmot Township and I will quote directly from the Bennett Jones letter “without any substantive review of land use compatibility issues or sufficient setback and separation considerations.”

As you likely remember, in Township Staff’s haste to see as much land approved as possible bypassing all proper processes, our community citizens had less than 72 hours from the release of the Staff Report until it was being approved by Council on November 27th despite the generations worth of land-use decisions being made. There is not even any mention of the Nachurs Alpine facility anywhere in the 22 pages of Staff Report despite the new designations being sought for lands all around it.

When the community delegations raised the issue of Alpine at the Council Meeting on November 27th they were accused of not knowing what we were talking about, that we were not experts, that Township Staff knew more, and there was a debate as to if Anhydrous Ammonia was even used at this site. The delegations had to answer numerous questions at the podium and it was clear that citizens knew more than Staff or others in Council Chambers that night - which has been made very clear by this letter from the legal counsel of Nachurs Alpine confirming the exact concerns the community was raising while also demonstrating the lack of knowledge of Township Staff and elected officials about this facility, it’s activities, and the proper safety requirements.

It shouldn’t take citizens having to give up their own time and argue before Council for the common sense and legally required safety studies, setbacks, and separation requirements. Council should be ashamed of requesting developments from the Minister (many never even contemplated before) surrounding this facility with none of the required studies, planning, or basic knowledge and then being so bold as to argue with citizens coming to Council to raise concerns.

Then astoundingly, still proceeding to vote to approve development requests without any of the proper studies, data, land needs analysis, justification, planning reports, public consultation, nor First Nations engagement.. There is a reason why all these planning procedures are required and why citizens and community groups were so adamant two weeks ago that Council reject this tainted, corrupt provincial process and simply continue forward with our just-approved Regional Official Plan that has had all the proper planning, consultation, studies, and First Nations support.

There was only one Councillor who raised concerns, expressed issues he had about the improper processes, and voted against this tainted provincial process and improper procedures.

As we mentioned at the time the liability and exposure to the Township is likely right off the charts.

The province has done no studies of these lands that are about to be approved for development and Wilmot Township has provided no information, no studies, no data, no rationale, nor even any information about the very challenging situation with the Naturus Apline facility and surrounding developments either. The lack of transparency between the Township and province is extremely troubling and being asked to approve development lands in such close proximity to such a facility will likely come as a surprise to the Minister and Ministry Staff who have at least been notified of this situation now by the owners of the facility directly.

While Township Staff will likely try to assure Council that there are still plenty of approval processes and secondary planning requirements yet to be completed, the simple fact of almost all of the lands proposed by Township Staff fall within the 1.6km blast exclusion zone recommended for chemical plant facilities such as this means that almost all of these lands are unsuitable for development of any sort. It makes Wilmot look foolish requesting massive amounts of land that can never be developed and leads to the question of where is future development going to go if we aren't planning properly for where it can go now?

Unless of course the goal is to drive a long-standing business like Nachurs-Alpine from our community similar to the very unfortunate situation unfolding in Brantford as the municipal Council there was duped into approving subdivisions on employment lands too close to the SC Johnson facility that could force them to close and move from town - costing hundreds of jobs the community depends on.

Hopefully, we will see Wilmot Council following only proper planning processes in the future and not falling for extremely troubling and unprecedented schemes from Queen's Park bypassing all proper and legally required planning processes. Our community's safety is not "red tape" to be bypassed or eliminated.

I hope that Wilmot Councillors will have more questions in the future, be less trusting of following Staff recommendations when so many concerns are being raised, be less condescending to community delegations raising many concerns (and realize that we have been in Council Chambers longer than any current Staff or elected officials and have been through this all many times before), and work harder to follow proper, proven planning procedures rather than be lead astray by the enticements of a distant Minister at Queen's Park.

Of course Nachurs Alpine was only one of many issues we raised that night. There are still just as significant issues with groundwater, sewage treatment, the destruction of the Countryside Line, the assimilative capacity of the Nith River, traffic issues, the carrying capacity of our watershed, MDS issues, climate change targets that still need to be met despite massive growth which greatly complicates needed reductions, etc. There are so many reasons why what happened two weeks ago is not in the best public interest or the greater public good.

It's really unfortunate when a longstanding business in town has to go to the expense of having their lawyers write a multipage letter to the Township to remind them that they need to be following proper planning and safety procedures. It's alarming how little knowledge there seems to be about such a dangerous facility in the middle of our community. Our community members have made a considerable effort to learn a lot about the facility over the years, have had extensive meetings with with current and

past Nachurs Alpine staff, and have studied the Texas and North Carolina explosion incidents including speaking with people from those communities to understand the similarities and issues we need to be aware of. Heavens only knows how Wilmot Township would ever handle an similar incident here... These communities are still trying to recover and deal with all the legal costs and issues.

We already had the visionary, sustainable Regional Official Plan that we needed for the future with none of these tainted Forced Boundary Expansion lands and further troubling lands being requested by Wilmot that stand to destroy the entire Countryside Line concept. It isn't too late for Wilmot Township reverse course, reject this improper process and tainted provincial land decisions, and simply proceed forward with properly completed and thoroughly studied, researched, and widely consulted Regional Official Plan that was so strongly endorsed by Wilmot Council, the Wilmot Mayor, and so many our community just 14 months ago.

Please reach out anytime with questions or ideas.

Sincerely,  
Kevin Thomason.

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**1) Letter from Bennett Jones - Legal Counsel for Nachurs Alpine to Wilmot Township:**

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Andrew L. Jeanrie  
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November 29<sup>th</sup>, 2023

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Jeff Bunn  
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Dear Members of Township Council and Planning Director:

**Re: Township response to Honourable Paul Calandra, Minister of Municipal Affairs and Housing regarding Region Waterloo Official Plan Decision  
Report No: DS 2023-019  
Nachurs Alpine Solutions Inc. Comments**

We are the solicitors for Nachurs Alpine Solutions Inc. (“**Nachurs**”), the owner of the North American renowned fertilizer manufacturing facility located at 1356 Nafgizer Road (“**New Hamburg facility**”), with the supporting head office located at 35 Neville Street, New Hamburg.

We are writing this letter on behalf of our client, and more particularly, in response to the above-noted Director of Development Services Report and Council's actions on Monday November 27<sup>th</sup>, 2023. We understand that the Mayor will be responding to the Honourable Paul Calandra's request in a manner consistent with Council's decision on that night.

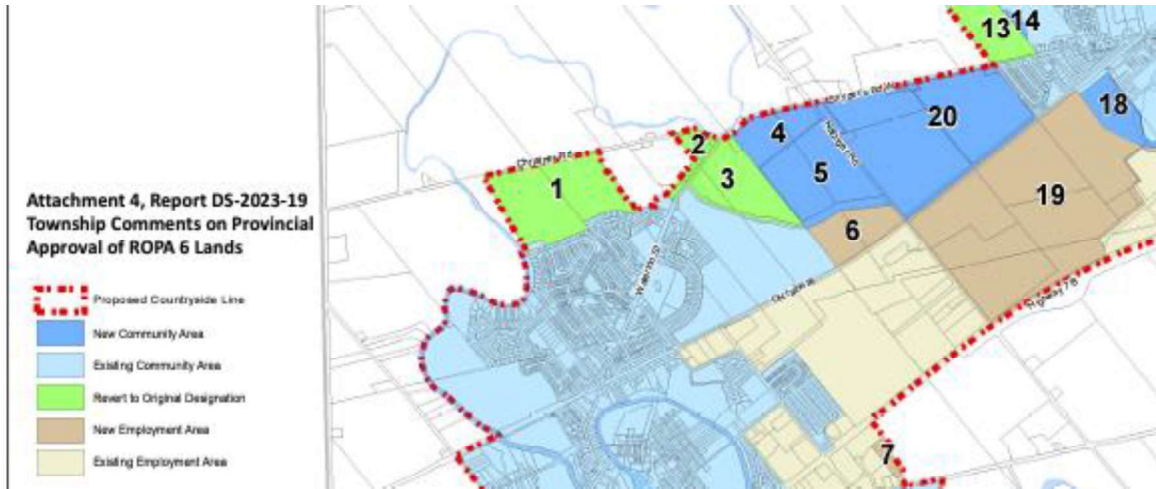
Our client's concerns relate to the potential development of sensitive lands in the vicinity of its facility without any substantive review of land use compatibility issues or sufficient setback and separation considerations.

More particularly, the purpose of this letter is to express our client's support for Township's staff requirement "that site specific official plan amendments not be permitted to designate the additional lands" until the required secondary plans are in force. This would ensure that a fulsome, public review of land use compatibility will have taken place prior to any development proceeding in the future.

We also wish to highlight that our client's concerns relate directly to the lands identified in Attachment No. 4 in the Report as parcels 5, 6, 19 and 20 (see below).

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### Background

The New Hamburg facility is located on the west side of Nafgizer Road, abutting the south side of the rail corridor, but more importantly south, west, and south west of the lands of concern. The New Hamburg facility takes advantage of both the abutting CN rail line and spur, and Nafgizer Road to bring inputs in and deliver outputs to its customers. It goes without saying, the facility relies upon Nafgizer Road for access as well.



Nachurs is a leading manufacturer of liquid fertilizers in North America providing quality products since 1946. The New Hamburg facility is the only one located west of Saskatchewan. Nachurs has two Canadian manufacturing plants and four U.S. facilities. Nachurs markets specialty precision

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liquid in-furrow starters, foliar fertilizers, and micronutrients for field and specialty crops under the ALPINE brand in Canada. Nachurs is owned by Wilbur-Ellis.

Wilbur-Ellis, founded in 1921, is a leading international marketer and distributor of agricultural products, animal nutrients, and specialty chemicals and ingredients. Wilbur-Ellis acquired Nachurs in 2019. Both companies are absolutely committed to safety while delivering value for their customers. Increasingly, that means innovating and partnering with customers to improve their productivity and profitability, while at the same time helping them reduce their environmental footprint. This benefits New Hamburg and surrounding areas.

It is this commitment to land use compatibility, safety and financial well being that concerns our client on a go forward basis.

Today Wilbur-Ellis, Nachurs, and ALPINE liquid fertilizers are positioned very well to serve the agricultural marketplace in Canada. Locally manufactured products and global operational experience make Nachurs the most efficient producer of quality products. The future growth of the ALPINE brand in the Canadian agricultural marketplace is enhanced by this position. **This stability and growth are critical to the continued operation of the facility in New Hamburg.**

The New Hamburg facility manufactures products for the Canadian market and to export to the United States. It employs local residents and serves local farmers, helping to retain jobs in the area and add to the local tax base.

### **New Hamburg Facility and the Maintenance of Safety**

Due to the nature of the industrial activities at the New Hamburg facility, any proposed new land use should be evaluated in the context of the MECP Guideline D-6 Series standards.

We reiterate that in addition to the Compatibility/Mitigation Studies, as well as Noise and Air Quality Studies that are required, the studies must be peer reviewed at the applicant's expense.

More significantly and directly relevant, the Anhydrous Ammonia Code of Practice establishes setbacks respecting the storage of anhydrous ammonia.

Fertilizer Canada publishes an Anhydrous Ammonia Code of Practice (Code of Practice) that provides uniform safety and security practices for the safe handling and storage of anhydrous ammonia at ag-retail facilities across Canada. The Code of Practice outlines best practices applicable to the transportation, distribution, storage, and handling of anhydrous ammonia and was written by fertilizer manufacturers, distributors and ag-retailers, with input from government agencies, and the first responder community.

Nachurs maintains a Certificate of Compliance from Fertilizer Canada that the facility is compliant with the Code of Practice, which requires meeting all of the safety and security protocols identified in the Code of Practice and demonstrating compliance through biennial facility audits. All ag-retail sites in Canada that store anhydrous ammonia are certified by Fertilizer Canada under the Code of Practice.



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Failure to maintain this certification would result in a facility no longer being eligible to receive shipments of anhydrous ammonia in Canada since Fertilizer Canada members must commit to only ship anhydrous ammonia to retailers who are certified as compliant with the Code of Practice. If this permission is lost or the ability to expand in the future is blocked, the New Hamburg facility in New Hamburg would be forced to relocate. As detailed further below, this is exactly the type of result that the Provincial Policy Statement ("PPS") specifically directs planning authorities to avoid.

The Code of Practice establishes siting standards that consider appropriate separation distances between fixed anhydrous ammonia storage vessels and people. These minimum separation distances are based on dispersion modelling and risk analysis, and are intended to provide an additional level of protection to minimize the potential risk of exposure to anhydrous ammonia to the general public. These distances are derived based on typical failure rates for normal, non-defective and properly operated equipment, and ignored human error. These separation distances are in addition to the numerous protections that are in place with respect to anhydrous ammonia through the Code of Practice, or developed by the facility through its environmental emergency planning.

We stress the importance of the PPS. As a clear example of this, redevelopment proponents through the required Secondary Plan must address key provisions of the PPS relating to employment uses, such as:

1.2.6.2 "...planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:

c) adverse effects to the proposed sensitive land use are minimized and mitigated; and

d) potential impacts to industrial, manufacturing or other uses are minimized and mitigated.

The PPS also requires the Township to ensure:

1.3.2.1 "Planning authorities shall plan for, protect and preserve employment areas for current and future uses ...."

1.3.2.2 "... Employment areas planned for industrial and manufacturing uses shall provide for separation or mitigation from sensitive land uses to maintain the long-term operational and economic viability of the planned uses and function of these areas."

## Conclusion

The location of sensitive land uses immediately across from our client's "existing industrial facility", putting that facility at risk, is not consistent with the PPS. The whole idea that the approval of sensitive land uses abutting industrial uses without full and proper study is clearly not good planning. Therefore,



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the municipality must request the Minister to include the condition respecting no applications prior to a Secondary Plan coming into force at least as it relates to parcels 5, 6, 19 and 20.

Thank you for your consideration of these comments. Wilbur-Ellis and Nachurs welcome the opportunity to discuss its concerns further through the proper and appropriate *Planning Act* processes for Secondary Plan Amendments, Official Plan Amendments, Rezoning, Plan of Subdivision and Site Plan approval applications.

Please provide us with notice of any decision regarding this matter.

Yours truly,

**BENNETT JONES LLP**

DocuSigned by:



Andrew L. Jeanrie

cc: The Honourable Paul Calandra  
MPP Mike Harris  
Mayor Natasha Salonen

