

**MINUTES BOOK\*\*TOWN OF COEYMANS  
May 11, 2023 – Public Hearing – 6:00pm**

**A Public Hearing was held Thursday May 11, 2023 at 6:00pm at Town Hall, 18 Russell Avenue, Ravena, New York**

**PRESENT:** George D. McHugh, Supervisor  
Brandon L. LeFevre, Council Member  
Marisa Tutay, Council Member  
Stephen J. Schmitt, Council Member

**Absent:** Linda S. Bruno, Council Member

**ALSO PRESENT:** Candace McHugh, Town Clerk  
James Peluso, Town Attorney

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Supervisor McHugh called the meeting order and led the audience in the Pledge of Allegiance. Council member Tutay led the audience in prayer. Supervisor McHugh asked that the record reflect that all board members were present with the exception of Council member Bruno.

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Supervisor McHugh opened the Public Hearing and asked the clerk to read the notice:

**NOTICE OF PUBLIC HEARING  
TOWN OF COEYMANS  
PROPOSED LOCAL LAW NO. 4 OF 2023**

NOTICE is hereby given that the Town Board of the Town of Coeymans will hold a Public Hearing on May 11, 2023 at 6:00 p.m. to consider adoption of Local Law No.4 of 2023. The purpose of said local law is to amend certain provisions of the Town Code, specifically amendment of Sections 25-4 54-4(B), 65-10(D) and 65-10(R)(1); and repeal of Chapter 109 of the Town Code.

The hearing will take place at the Town Hall, 18 Russell Ave, Ravena, NY 12143. A copy of the proposed local law is available for public inspection at the Town Clerk's Office during normal business hours. At the above date, time and place all interested persons are welcome to attend and will be heard.

**By Order of the Town Board  
Of the Town of Coeymans  
Candace McHugh  
Town Clerk**

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**Public Comment**

Javid Afzali an Attorney for Harris Beach spoke on behalf of Lafarge Holcim: Mr. Afzali gave an overview of a letter sent by Lafarge to the members of the Town board opposing local law 4. A copy of this letter is attached to the minutes. Supervisor McHugh asked for clarification if Mr. Afzali was asking for a pause or moratorium. Mr. Afzali did say those were options. Supervisor McHugh liked the idea of a pause to reevaluate.

Mike Stott asked if a copy of the Lafarge letter can be seen by the community. The Supervisor responded yes.

Ten Eyck Powell lives on Bronk road: Mr. Powell is concerned about the developability of his property. He thanked Mr. Afzali for his comments. The modification of this law will directly affect his property and feels as though it is a downgrading in classification.

**Public Hearing Continued on June 22, 2023:**

No public comments were given on the revised Proposed Local Law 4 of 2023. Supervisor McHugh stated that sections 65-10(D) and 65-10(R)(1) were omitted from proposed local law 4 of 2023 and will be dealt with separately.

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**Motion to keep open the Public Hearing for Proposed local law 4 and continue on June 22, 2023** was made by Supervisor McHugh and Seconded by Council member LeFevre- APPROVED – VOTE – AYES 4 – NAYS 0 – ABSTAIN 0 – ABSENT 1 - SO MOVED

**Motion to Close the Public Hearing for Proposed Local Law 4 of 2023** was made by Supervisor McHugh and Seconded by Council member Tutay- APPROVED – VOTE – AYES 3 – NAYS 0 – ABSTAIN 0 – ABSENT 2 - SO MOVED

6:40p.m.

*Respectfully Submitted,*

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*Candace McHugh, Town Clerk*



May 11, 2023

**Via Electronic Mail**

Town of Coeymans  
Supervisor George D. McHugh  
18 Russell Ave.  
Ravena, New York 12143

***Re: Public Comment on Proposed Local Law 4***

Dear Supervisor McHugh and Members of the Town Board,

On behalf of Holcim (US) Inc. (Holcim) and the Lafarge Ravena Cement Plant, please accept this letter into the public hearing record on the Town of Coeyman's proposed Local Law 4 § IV, which would amend Town Code § 165-10 (D) governing multi-zoning district tax lots (Proposed Zoning Amendment).

As detailed below, the Proposed Zoning Amendment is ill-conceived, unnecessary, and strikingly anti-business. As one of the largest employers, taxpayers, and landowners in the Town of Coeymans, Holcim opposes the Proposed Zoning Amendment in the strongest possible terms. The Proposed Zoning Amendment would have significant negative impacts on property owners, businesses, and the Town's tax base. In addition, the Proposed Zoning Amendment will likely result in significant adverse environmental impacts, none of which have been properly identified or evaluated as required by law. The Proposed Zoning Amendment is also inconsistent with the Town's 2021 Comprehensive Plan. Holcim thus urges the Town Board to withdraw or vote against the Proposed Zoning Amendment.

**1. Background on Holcim and the Lafarge Ravena Cement Plant**

Since 1962, the Lafarge Ravena Cement Plant (or Cement Plant) has been a business leader and one of the largest private employers in the Town of Coeymans. The Cement Plant produces materials for the construction industry and helps build the local community and New York State's infrastructure and iconic landmarks, such as the One World Trade Center, the 9/11 Memorial, the Governor Mario M. Cuomo Bridge, and MetLife Stadium.

Holcim proudly employs more than 150 full-time employees at the Lafarge Ravena Cement Plant. Through our recent modernization project to make the Cement Plant a state-of-the-art facility, Holcim has generated over \$170 million for the local economy and created approximately 800 permanent and temporary jobs.

Holcim owns four parcels in the Town, including a 3,191-acre tax parcel (Parcel). The Parcel is primarily located in an industrial zoning district but small portions of the Parcel are located in residential and commercial zoning districts.



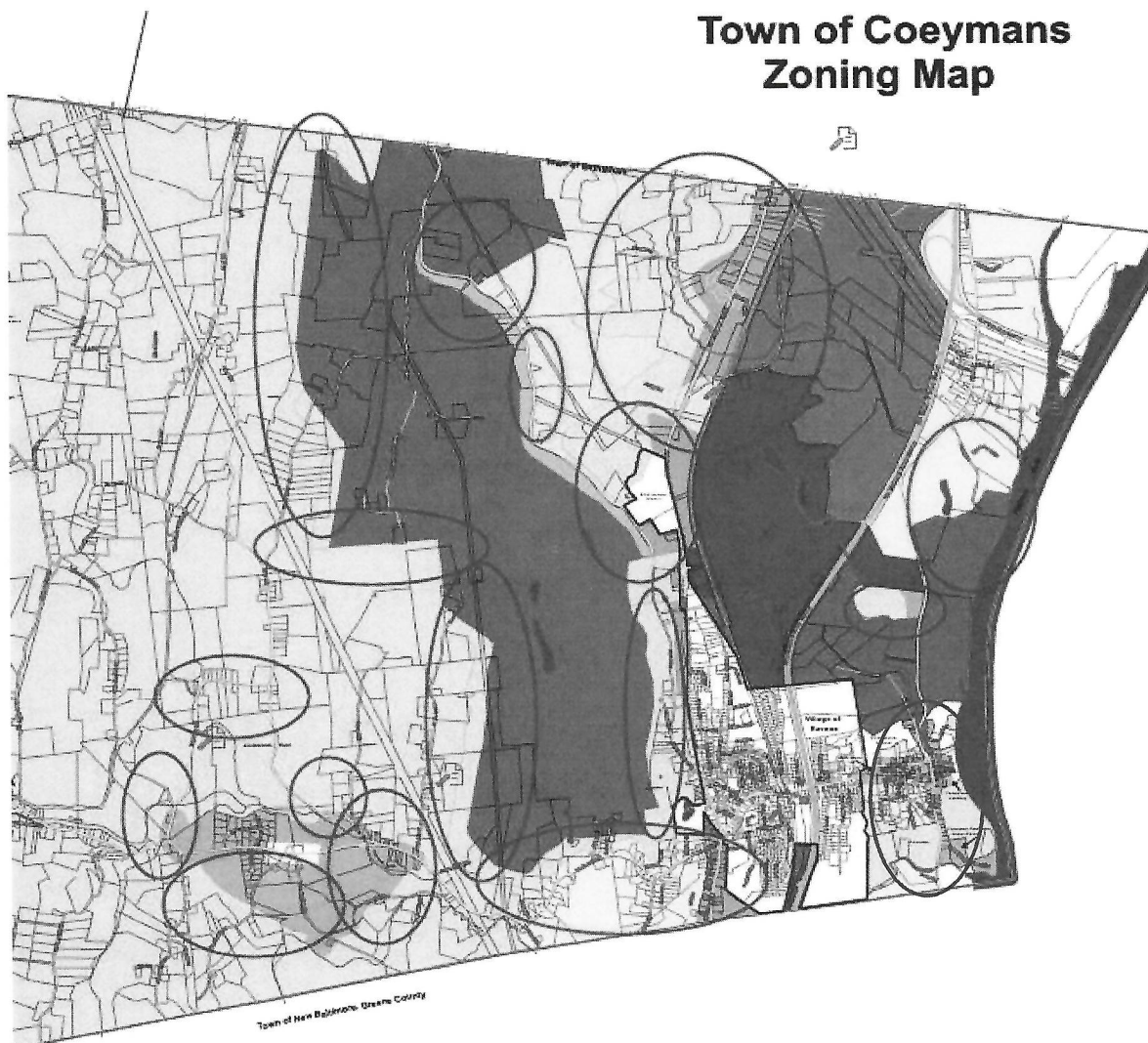
## 2. Regulatory Impact of the Proposed Zoning Amendment

The Town's zoning code is set forth in Chapter 165 of the Town Code. The Proposed Zoning Amendment would rewrite Town Code § 165-10 (D) and result in significant zoning and regulatory impacts throughout the Town.

Currently, Town Code § 165-10 (D) states:

Where a district boundary divides a lot in ownership or record at the time of enactment of this chapter said lot shall be regulated under requirements for the less restrictive district, provided that the lot has street frontage in the less restrictive district.

Town Code § 165-10 (D) attempts to address the misalignment between the Town's zoning districts and current parcel boundaries as depicted below and in **Attachment 1**.





The Town's existing zoning code thus allows a property owner with a parcel in more than one zoning district to use the property in accordance with the less restrictive district use and bulk standards as long as the parcel has road frontage in such district. As a result, there are a substantial number of businesses along the Town's commercial and industrial corridors with properties divided by a zoning boundary line that rely on and exist because Town Code § 165-10 (D) authorizes those property owners to utilize the less restrictive zoning requirements.

The Proposed Zoning Amendment would rewrite Section 165-10 (D) as follows:

Lots in two districts. Where a district boundary divides a lot in ownership or record at the time of enactment of this chapter said lot shall be regulated under requirements **for the more restrictive district**.

(Emphasis added.) In other words, the Proposed Zoning Amendment will reverse the existing standard and impose the more restrictive use and bulk standards on lots in multiple zoning districts regardless of the existing parcel's use. The Proposed Zoning Amendment does not include any exemptions, waivers, or recognition of pre-existing uses.

As a result, under the Proposed Zoning Amendment, if businesses own parcels primarily in commercial or industrial zoning districts but small portions cross a boundary with a residential district, the **entire parcel** would now be subject to the residential zoning restrictions – including the portions of the parcel in commercial or industrial zoning districts. It is difficult to conceive of a more anti-business amendment to the Town's zoning code.

The Proposed Zoning Amendment would result in Holcim's four parcels totaling 3,288.6-acres– which is overwhelmingly located in the I-1 industrial zoning district but also includes small portions in residential and commercial districts – being subject to residential use and bulk standards (*see Attachment 2*).

The Proposed Zoning Amendment to Section 165-10 (D) will have the effect of a Town-wide rezoning and in essence eliminate most, if not all, of the uses allowable in the Town's industrial zoning district. This will have significant adverse impacts on property rights and the Town's economy, tax base, and fiscal well-being. The Proposed Zoning Amendment will also have significant environmental impacts that the Town Board has neither identified nor considered as required under the New York State Environmental Quality Review Act (SEQRA). Finally, the Proposed Zoning Amendment is also incompatible with the Town's Comprehensive Plan.

### **3. The Proposed Zoning Amendment Would Infringe Vested Property Rights**

The Proposed Zoning Amendment would significantly alter the rights of property owners within the Town, placing new restrictions on properties that were previously subject to less stringent regulations. This will limit the ability of property owners to use or develop their land as they initially intended, effectively reducing the value of their properties and potentially infringing on their property rights.

If adopted, the Proposed Zoning Amendment will infringe on a property owner's legal rights to use, develop, or maintain their property in a manner that complies with the zoning or land use regulations in effect at the time the rights were established. Such rights are considered "vested" and constitutionally protected when a property owner has undertaken substantial steps, such as

obtaining necessary permits or making significant investments, in reliance on the existing regulations. Once vested, these rights are generally protected from subsequent changes to zoning or land use regulations that would otherwise render the property owner's intended use or development noncompliant (*Matter of Waterways Development Corp. v Town of Brookhaven*, 126 AD3d 708 [2d Dept], *leave to appeal denied*, 25 NY3d 909 [2015]).

In the context of the Proposed Zoning Amendment, property owners who have vested rights under the current, less restrictive zoning regulations will be adversely affected by the change. Given the potential impact of the Proposed Zoning Amendment on property owners with vested rights, the Town Board should carefully consider the legal, practical, and financial implications of the change before proceeding. By doing so, the Town can minimize the risk of infringing on property owners' vested rights and avoid potential litigation (*Matter of Waterways Development Corp.*, 126 AD3d at 708).

#### **4. The Proposed Zoning Amendment May Result in a Regulatory Taking Under State and Federal Law**

The Proposed Zoning Amendment may also result in a regulatory taking, as it would impose new restrictions on properties that would reduce their economic value. Under both state and federal law, regulatory takings can occur when government action places new, significant restrictions on property use. If the proposed change is considered a regulatory taking, property owners may be entitled to compensation for the loss of property value, potentially leading to significant legal and financial liabilities for the Town.

Under the Fifth Amendment to the U.S. Constitution, the government is prohibited from taking private property for public use without just compensation. This principle, known as the Takings Clause, applies not only to the direct appropriation of property (i.e., eminent domain) but also to certain regulatory actions that have a significant impact on the value or use of property.

In the landmark case *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), the U.S. Supreme Court established a framework for determining whether a regulatory action constitutes a taking. The Court outlined several factors to consider, including the economic impact of the regulation, the extent to which it interferes with the owner's reasonable investment-backed expectations, and the character of the government action. In addition to federal law, New York State has its own constitutional provisions and case law related to regulatory takings. Article 1, Section 7(a) of the New York State Constitution mirrors the language of the Fifth Amendment Takings Clause, protecting private property from being taken without just compensation (*see e.g., Seawall Associates v. City of New York*, 74 N.Y.2d 92 [1989]).

The Proposed Zoning Amendment has the potential to significantly impact the Town's commercial and industrial properties and effectively re-zones thousands of acres of commercial and industrial properties into residential property. This change, if adopted, would arguably be considered a regulatory taking under the *Penn Central* framework and the New York State Constitution, and would thus expose the Town to legal challenges from affected property owners. The Town could potentially be required to provide compensation for the reduced value of the properties resulting from the new, more restrictive regulations.



To avoid potential legal challenges and financial liabilities related to regulatory takings, the Town Board should carefully consider the impact of the Proposed Zoning Amendment on property values and the reasonable investment-backed expectations of affected property owners. As the Proposed Zoning Amendment constitutes a likely regulatory taking, it would be prudent for the Town to explore alternative approaches to achieve its policy objectives without exposing itself to such significant and unnecessary legal and financial risks.

## **5. Reassessment of Property Taxes and Lower Tax Base**

Adoption of the Proposed Zoning Amendment will likely necessitate a reassessment of property taxes for affected properties because the new restrictions will reduce their market value.

Commercial and industrial properties often generate higher tax revenue than residential properties due to their higher assessed values. By restricting the affected properties to residential uses, the Proposed Zoning Amendment would result in a reduced commercial/industrial tax base for the Town. That will put immediate upward pressure on residential property taxes and/or result in revenue losses, all of which will negatively impact the quality and availability of public services and infrastructure. Moreover, a property reassessment that lowers assessed values will impact any Payment in Lieu of Taxes (PILOT) agreement.

PILOT agreements are contractual arrangements between a local government and a property owner, often used in New York State to encourage economic/industrial development and support other public policy goals. Under a PILOT agreement, the property owner agrees to make payments to the local government in lieu of property taxes and provides other benefits or incentives to the taxing authority that are not otherwise required under the N.Y. Real Property Tax Law.

New York General Municipal Law, however, mandates that PILOT payments typically cannot exceed the actual tax burden of the property. Consequently, if the tax assessment of a property is lowered, the maximum amount of PILOT payments collectible from the property owner must often be renegotiated and reduced.

If the Proposed Zoning Amendments result in significant assessment reductions for affected properties, it could have the following impacts on tax assessment and PILOT agreements:

- A. Increased tax certiorari proceedings and legal challenges in negotiating new PILOT agreements: If tax assessments are reduced, the Town would likely face a significant increase in tax certiorari proceedings and difficulties in negotiating new PILOT agreements, as potential participants may be less inclined to enter into such agreements if they perceive the actual tax burden to be more favorable. This could limit the Town's ability to encourage economic development or achieve other policy goals through the use of PILOT agreements.
- B. Reduced property tax and PILOT revenue: Reduced tax assessments may result in reduced PILOT payments, as the maximum allowable PILOT payments would be based on the reduced tax burden. This could lead to decreased revenue for the Town and County, which may, in turn, impact the funding available for public services and infrastructure projects.



- C. Potential renegotiation of existing PILOT agreements: If the tax assessments for properties with existing PILOT agreements are significantly reduced, property owners may seek to renegotiate the terms of their agreements to align with the reduced tax burden. This could lead to further reductions in PILOT revenues for the Town.

Based on the foregoing, the Town Board should carefully consider the Proposed Zoning Amendment's likely impact on the tax assessments of affected properties and the resulting consequences for PILOT agreements. The Town Board needs this fiscal information to properly evaluate the overall costs and benefits of the Proposed Zoning Amendment. Without knowing the full revenue implications, the Town should not adopt the Proposed Zoning Amendment.

## 6. Violation of the N.Y. State Environmental Quality Review Act

The New York State Environmental Quality Review Act (SEQRA) requires state and local governments to assess the environmental impacts of discretionary decisions, such as zoning code amendments and rezoning actions, **before** taking those actions. SEQRA includes “an elaborate procedural framework requiring parties to consider the environmental ramifications of their actions ‘as early as possible’ and to ‘the fullest extent possible’” (*King v. Saratoga County Bd. of Supervisors*, 89 N.Y.2d 341, 347 [1996]). “The mandate that agencies implement SEQRA’s procedural mechanisms to the ‘fullest extent possible’ reflects the Legislature’s view that the substance of SEQRA cannot be achieved without its procedure, and that departures from SEQRA’s procedural mechanisms thwart the purposes of the statute” (*id.*). “Thus it is clear that strict, not substantial, compliance is required” (*id.*). The “requirement of strict compliance and attendant specter of [judicial] de novo environmental review ensure that agencies will err on the side of meticulous care in their environmental review” (*id.*).

Under SEQRA, before taking any action on the Proposed Zoning Amendment, the Town Board must identify all “relevant areas of environmental concern,” take a “hard look” at each of them, and then make a “reasoned elaboration of the basis for its determination” – all in “strict compliance” with SEQRA’s procedural requirements (*Kahn v. Pasnik*, 90 N.Y.2d 569, 574 [1997]). If the Town Board fails to do so, its actions with respect to the Proposed Zoning Amendment will be annulled (*id.*).

Actions under SEQRA are classified as Type I, Type II, or Unlisted (6 NYCRR § 617.3). Type I actions are those “that are more likely to require the preparation of an [environmental impact statement (EIS)]” (6 NYCRR § 617.4 [a]). In contrast, Type II actions are exempt from review as they are considered to have no significant adverse environmental impacts (6 NYCRR § 617.5 [a]).

The Proposed Zoning Amendment would impact the zoning/land use restrictions on thousands of acres in the Town. The Proposed Zoning Amendment is thus clearly a Type I action under SEQRA (*see* 6 NYCRR § 617.4 [b] [2] [defining Type I actions to include “adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district”]). As a Type I action, the Proposed Zoning Amendment “carries with it the presumption

that it is likely to have a significant adverse impact on the environment and may require an EIS” (6 NYCRR § 617.4 [a] [1]).

As a Type I action, the Proposed Zoning Amendment is automatically subject to a more rigorous SEQRA review process. Prior to adopting the Proposed Zoning Amendment, the Town Board would be required to complete a Full Environmental Assessment Form (FEAF) and coordinate with other involved agencies to determine if the Proposed Zoning Amendment could result in any significant adverse environmental impacts (*see* 6 NYCRR § 617.7). If it is determined that the change **may** result in any significant adverse environmental impacts, the Town Board must prepare a full EIS to identify and analyze those impacts, as well as reasonable alternatives and mitigation measures (6 NYCRR §§ 617.7 [a], 617.9 [b]). The Town Board would ultimately be required to issue SEQRA findings before taking any action on the Proposed Zoning Amendment (6 NYCRR § 617.11 [c]).

The Proposed Zoning Amendment will result in numerous potential adverse environmental impacts, which means the Town Board must prepare an EIS evaluating all such potential impacts before taking any action on the Proposed Zoning Amendment. To give just one obvious example, imposing residential use or building number/size/setback restrictions on existing industrial properties could make it impossible to undertake necessary and environmentally beneficial projects/improvements at existing industrial facilities in the future. The many other potential adverse environmental effects of effectively rezoning thousands of acres in the Town are too numerous to catalog here. However, there is no record of the Town Board discharging its obligation under SEQRA to identify and analyze any of the myriad potential adverse environmental impacts of the Proposed Zoning Amendment.

Because the Proposed Zoning Amendment will result in numerous potentially significant adverse environmental impacts, the Town Board is required to undertake a comprehensive environmental review under SEQRA before taking any action on the Proposed Zoning Amendment. It is essential for the Town to consider the potential social, economic, and environmental consequences of the proposed change and carefully weigh them against the intended policy objectives. By doing so, the Town Board can ensure that any potential changes made to the Town Code are environmentally responsible and do not inadvertently result in adverse outcomes.

#### **7. Disincentive for Economic Development and Inconsistency with the Town’s Comprehensive Plan**

The Proposed Zoning Amendment will create a disincentive for investment and development in the Town. Property owners and developers may be less likely to invest in properties that are subject to more restrictive regulations, which could ultimately stifle economic growth and job creation within the Town. This outcome is wholly inconsistent with the Town’s 2021 Comprehensive Plan.

A comprehensive plan serves as a guiding document for a municipality’s land use, growth, and development. It establishes a long-term vision and provides a framework for zoning and other land use regulations. Under New York State law, local zoning laws and ordinances must be consistent with the community’s comprehensive plan (*see e.g., Matter of Town of Bedford v. Village of Mount Kisco*, 33 N.Y.2d 178 [1973]). Inconsistency between zoning regulations and the



comprehensive plan can lead to legal challenges and undermine the overall coherence of the community's land use strategy.

The Town of Coeymans's Comprehensive Plan emphasizes the importance of supporting and fostering industrial and commercial development, as demonstrated by the following provisions:

- A. The Plan recognizes the Town's historical connection to industry, natural resources, and locally owned businesses, which have contributed to its economic vitality.
- B. The Plan acknowledges the unique opportunity for industrial development in Coeymans, especially considering the nationwide decline in industrial activity.
- C. The Plan highlights the challenge of declining business activity and expresses the Town's commitment to being a business-friendly community.
- D. The Plan identifies key areas for business growth and development, such as the Route 9W commercial corridor, and recommends economic growth in existing industrial areas.
- E. The Plan encourages collaboration with the Town's business community to promote economic development.

The Comprehensive Plan's emphasis on promoting industrial and commercial development is aimed at fostering economic growth and providing employment opportunities for residents. By *de facto* rezoning a significant number of commercial and industrial properties into residential properties, the Proposed Zoning Amendment would undermine these goals and recommendations and hinder the Town's ability to attract new businesses and support existing ones. This could lead to reduced economic development, fewer job opportunities, and a decline in the Town's overall economic health. Instead of fostering the desired economic growth and supporting the local business community, the Proposed Zoning Amendment would likely hinder industrial and commercial development and limit the Town's ability to capitalize on its unique opportunities for economic revitalization. Additionally, the Comprehensive Plan emphasizes the importance of preserving and enhancing the Town's historical connection to industry and locally owned businesses. The Proposed Zoning Amendment, by potentially converting commercial and industrial properties into residential properties, could erode the Town's unique character and sense of identity. Thus, adoption of the Proposed Zoning Amendment would be inconsistent with the Comprehensive Plan and could lead to costly litigation for the Town and potentially force it to reconsider or revise the amendment.



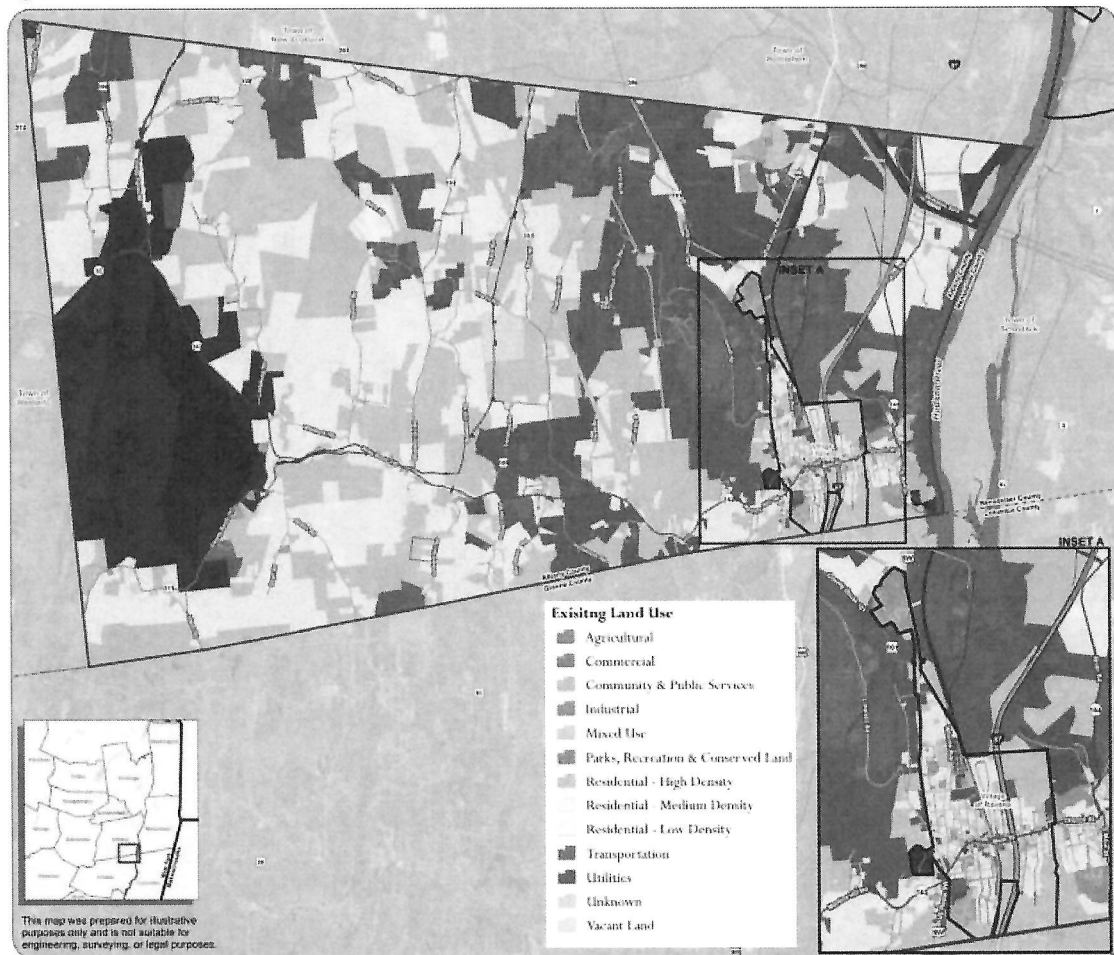
## 8. Rational Alternatives

Given the importance of ensuring consistency between zoning regulations and the comprehensive plan, the Town Board should carefully consider the potential impacts of the proposed amendment on commercial and industrial properties and consider feasible and rational alternatives to achieve its policy objectives. For example, if the legislative intent and policy goal for the proposed amendment to Town Code § 165-10 (D) is to address issues regarding parcels divided by zoning district boundary lines, then the rational alternative is to undertake a comprehensive Town rezoning to align existing uses with parcel boundaries as recommended and depicted in Comprehensive Plan Figure 5:



### Town of Coeymans Comprehensive Plan Amendment

Figure 5. Land Use



Unlike the current zoning map (Attachment 1) with its arbitrary zoning district boundary lines, Comprehensive Plan Figure 5 shows existing land uses aligned with parcel boundaries.

Figure 5 could serve as the basis to amend the existing zoning map, which would not only satisfy the Town Board's legislative intent and policy goals, it would be consistent with the goals and recommendations in the Comprehensive Plan. Moreover, the zoning map amendment procedure under New York Town Law and SEQRA provides the necessary due process protections to protect the Town from potential legal challenges. Unlike to procedure for the proposed Town Code amendment, the zoning map amendment process would include identification of each parcel to be impacted, notice to such property owners and the public at large, Albany County referral, multiple public hearings to providing residents and affected property owners an opportunity to be heard, as well as a comprehensive SEQRA assessment.

## 9. Conclusion

Holcim strongly opposes adoption of the Proposed Zoning Amendment as an ill-conceived and unnecessary proposal that will have numerous negative consequences for the Town's economy and fiscal well-being. The Proposed Zoning Amendment could potentially infringe on property owners' vested rights, result in regulatory takings claims, reduce tax assessments, and reduce tax revenues and PILOT agreements. Moreover, by *de facto* rezoning a significant number of commercial and industrial properties and restricting the impacted properties to residential uses, the Proposed Zoning Amendment undermines the goals and recommendations outlined in the Town's Comprehensive Plan.

The Town should thus carefully evaluate the potential legal, practical, economic, and fiscal implications of the Proposed Zoning Amendment before taking any further action. The Town should instead explore alternative approaches to ensure that the Town's zoning regulations align with the community's long-term vision and goals for economic growth, community development, and preservation of the Town's unique character.

Sincerely,



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Paul N. De Santis  
Regional Counsel  
Holcim (US) Inc.