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Los Gatos files lawsuit to clarify California's 'builder's remedy' law

State says developers have unlimited time to remedy applications, but town council disagrees

The Luxe, a 117-unit mixed media development proposed for Los Gatos Boulevard, was one of two projects that led the Town of Los Gatos to file a lawsuit seeking clarification as to whether developers can continuously refile incomplete applications for builder's remedy projects. (Courtesy photo)

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Los Gatos is asking for a judge to weigh in on a conflicting interpretation regarding builder's remedy applications.

The town filed a lawsuit last week at the Santa Clara County Superior Court for clarification regarding the application process for builder's remedy housing projects. Builder's remedy is a controversial provision that allows developers to build a project of whatever height and size wherever they would like in cities that don't have a state-certified housing element.

According to state housing law, developers are have 180 days after submitting a preliminary application to submit a full application for a builder's remedy housing project, or their preliminary application will expire. After that, they have 90 days to resolve any missing information in their applications.

Los Gatos interpreted the law to mean that there was only one 90-day period in which developers can remedy any issues with their applications. However, the California Department of Housing and Community Development stated that a developer can have successive 90-day periods to fix their applications that could run indefinitely. The state department also threatened to get the state attorney general involved to enforce its interpretation.

Los Gatos Mayor Matthew Hudes said clarifying this law would make sure that the town can efficiently approve applications to make way for much-needed housing.

"This action is necessary to protect the interests of our town and provide much-needed clarity," Hudes said in a release. "By seeking the court's help, we aim to avoid further confusion and ensure that the town's actions are consistent with the law. Without resolution of this issue, applications could remain incomplete indefinitely, which would only delay the construction of much needed housing."

The issue was raised when applications for two projects in Los Gatos were deemed incomplete and the developers asserted that they had unlimited time to remedy them. Those projects are the development that would replace the Ace Hardware on Los Gatos Boulevard and a proposal for The Luxe, a 117-unit mixed-use development, at 14849 Los Gatos Blvd.

Hudes said the town is currently processing 12 or 13 builder's remedy applications.

Los Gatos plans to build over 2,400 new units, exceeding the 1,993 units mandated by the state. These projects include a 155-unit housing development at the Los Gatos Lodge site and a 185-unit independent living project for seniors. In its release, the town stated that applications for nearly 1,700 units have already been approved in the last two years or are in the process of being reviewed.

The town also agreed to give the developer of Newtown, a three-story townhouse project, time to submit a revised application.

Hudes said he wanted to clarify the difference between builder's remedy projects and affordable housing, as the former allows for applications that don't adhere to local building and zoning standards.

"The council represents the interests of the town, not just obviously the residents but also the property owners, the business owners, employees, customers and businesses, visitors, as well as those who want to develop real estate here," Hudes said. "That's why it's important to have clarity on this issue, and that's why the council authorized pursuing a court opinion: because we need to represent and balance those interests."

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