Transferable development rights under scrutiny as Pitkin County sharpens growth management tools

The cabin on the backside of Aspen Mountain was photographed on Wednesday, October 2, 2019. Special zoning and a transferable development rights program have limited home construction in sensitive areas. (Kelsey Brunner/The Aspen Times)

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A program that has been pivotal in limiting development in Aspen's backcountry for nearly 25 years is being scrutinized as part of an update of Pitkin County's growth management tools.
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County officials are considering phasing out the transferrable development rights program over time or tweaking it in some other way.

"We have looked at the thought of sunsetting the TDR system as it is today but not sunsetting the use of the TDRs that are in the system," Pitkin County Community Development Director Cindy Houben said last week at a joint Pitkin County Commissioner-Pitkin County Planning and Zoning Commission meeting.

The TDR program was created in the late 1990s as a complement to Rural and Remote Zoning, which drastically limits development in backcountry areas at least one-half mile off established roads. It limits development to 1,000-foot cabins.

Some landowners were angry that the county zoning took away their ability to make money off the sale of their land. The county created the transferrable development rights, which owners of Rural and Remote lands could sell on the open market if they chose not to build a cabin.

The county designated receiver sites where the TDRs could be used to increase house sizes and, to a lesser extent, for new development. In essence, the development rights get transferred from areas targeted for preservation and used in the urban growth boundary.
An annual report prepared by the planning staff for the county commissioners in December said the program is "functioning well."

The county has issued 389 certificates for TDRs and 254 have been used or "extinguished," the report said. Most but not all TDRs were created in connection to Rural and Remote lands.

There are 135 TDRs still floating around on the market and potentially available for use, according to the report. Houben said at Wednesday's meeting that the slow rate of annual use of TDRs means the existing TDRs would not be absorbed for several years.

"We think that would be about a 20-year growth rate for the existing 135 transferrable development rates that are out there," she said. Pitkin County isn't looking at rescinding those TDRs. It's considering not creating any new ones.

Scott Bayens, a real estate agent with Aspen Snowmass Sotheby's International Realty, said he is concerned about the potential of not issuing new TDRs. While 135 might exist on paper, many of those are locked up and out of play for various reasons, he said. Bayens is also a columnist for The Aspen Times.

"After selling a record number this year, I am out of inventory," Bayens said. "I have requests from six brokers for 10 TDRs." It's proving extremely difficult to find those TDRs, he said.

He estimated 12 TDRs have been sold in the past year, with most activity coming in the past six months. In just about all cases, TDRs are sought to increase the size of house that can be built. Pitkin County has a cap at 5,750 square feet. The purchase of a TDR allows expansion of house size by 2,500 square feet in qualifying areas, such as the Aspen urban growth boundary.

"The demand has been exceptional," Bayens said. Therefore, he doubts it will take long to absorb the existing TDRs, especially if Pitkin County, reduces the allowable house size, as is being considered. It is possible TDRs will be in even greater demand.

Prices of TDRs rise and fall with the real estate market. In the super-heated market prior to The Great Recession of 2009, prices ranged from $282,500 to $310,000, according to Pitkin County's annual report. In 2007, there were 34 TDR transactions. Prices fell during the recession but have steadily climbed. Last year there were 10 sales of TDRs ranging from $225,000 to $240,000, according to the county.

Bayens said he works with multigenerational owners of land, for the most part. That includes families in the Upper Fryingpan Valley and ranchers in the Crystal River Valley. They want to capitalize on TDR demand and sell their rights. He believes it would be unfair to tell those types of property owners that no more TDRs will be created.

"These aren't wealthy people," he said. Bayens believes landowners who qualify for creating TDRs must be given the opportunity before the program is ended.
Houben said the county is only examining concepts at this point. There are no recommendations or imminent decisions. In fact, she said, there has been discussion about expanding use of TDRs.

"On the other side of the coin, we also discussed other potential uses for TDRs and more specixcally in the (urban growth boundary)," Houben said.

Pitkin County officials said Wednesday they would expand their public outreach in coming months to discuss possible revisions to
growth management tools.

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