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An odd subset of Pitkin County's real estate market cools down

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Dec 22, 2023



A view of the backside of Aspen Mountain in July. The sale of transferable development rights on backcountry parcels has helped limit development along Richmond Ridge.

Scott Condon/Aspen Daily News

The market for transferable development rights cooled in 2023 with prices falling to \$1.25 million and below, according to a report by the Pitkin County Community Development Department.

Transferable development rights, known as TDRs, were a hot commodity in 2021 and 2022. The 22 sales involving money exchanges in 2021 tied the record set in 2012, according to the report. The highest price recorded for a TDR hit \$2.1 million in 2022. The county's sales records for TDRs go back to 2007.

This year there were five sales ranging in prices from \$1 million to \$1.25 million. In 2022 there were eight sales with prices from \$950,000 to \$2.1 million.

“In 2023, the price of a TDR decreased, though it still remains higher than it was 2014-2020,” said the report by Pitkin County Community Development Director Suzanne Wolff. “The most recent sale on Dec. 5 was \$1 million. The price continues to provide a compelling incentive to sever rights from (areas where TDRs can be created).”

The cool down is likely due to uncertainty earlier this year over where Pitkin County was going with house-size caps and other changes to its land-use code, said Scott Bayens, a real estate agent with Aspen Snowmass Sotheby's who monitors the TDR market.

The Pitkin County Commissioners appointed a growth committee in 2023 to deliberate changes in the land-use code with the goal of reducing greenhouse gas emissions from the residential sector.

“That began to scare some people,” Bayens said.

One of the recommendations by the committee was to reduce the maximum size of single-family homes to 9,250 from 15,000 square feet. The commissioners approved the downsizing and pledged to consider a further reduction to 8,750 square feet in 2024.

Most buyers of TDRs aim to increase house sizes in allowable areas known as receiving sites. One TDR allows an expansion of up to 2,500 square feet. With the uncertainty of house-size caps and concerns that the TDR program might be tweaked in the land-use code revisions, many potential buyers took a wait-and-see approach, Bayens said. They didn't want to get stuck with an unusable TDR after shelling out up to \$2 million, he said. As a result, the number of transactions and prices dipped.

“This is a very volatile commodity,” Bayens said.

The market perked up after the commissioners settled on the new house-size cap in November. “As soon as they made the changes recently, several TDRs traded hands,” Bayens said.

TDRs are a uniquely Pitkin County development tool. They are a key part of a program to limit residences in the backcountry and, to a lesser extent, coax conservation and preservation of historic structures and offset development foregone on constrained properties or portions of properties.

Pitkin County downzoned backcountry property on the back of Aspen Mountain and elsewhere in the mid-1990s to prevent the proliferation of mansions seen around Aspen, Snowmass Village and the mainstems of side valleys. The Rural and Remote Zoning that was created limited development on rural parcels that met certain criteria to 1,000-square-foot cabins. The county later created the transferable development rights program to ensure the Rural and Remote Zoning could survive legal challenges alleging a “taking” of property rights. TDRs are issued as an alternative to allowing a cabin. The number of TDRs issued depends on the size of the property.

Between 1997 and 2023, there have been 416 certificates issued for TDRs, according to Wolff. Of those, 297 have been used or extinguished.

“That leaves 119 TDRs available for use,” she told the county commissioners in a year-end update on Wednesday. Over the last decade, 66 TDR certificates have been issued and 129 have been extinguished, showing a bigger demand than supply.

About two-thirds of the 416 TDRs that have been issued have come from lands zoned Rural and Remote. Some landowners choose to build cabins rather than sell the development rights for big bucks. Since 1996, there have been 23 cabins built or approved for development. Fifteen have been constructed; one was expanded; three are under construction; and four are approved but unbuilt, according to the county report. The report indicated 18 of the 23 are on the backside of Aspen Mountain — in areas where there would probably otherwise be sprawling mansions.

“For all intents and purposes, the TDR provisions of the Land Use Code are functioning well,” the county report said.

Bayens expects more buyers to be seeking TDRs in 2024 as county regulations settle.

“I’m telling my clients if you want to sell a TDR, you can expect to pay \$1 million,” he said.

Availability is hard to gauge. While the county’s tracking indicates there are 119 TDR certificates available, not all of them are floating around on the market. About 25 are presumed to be held for specific approved development, the county report said. Bayens said some holders of certificates, such as heirs of estates, might not realize the value of the piece of paper they possess.

“It’s such an esoteric commodity,” he said. “There may be some out there in the wilderness.”

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