

Checklist for Purchasing a Residential Building Lot

This checklist highlights the issues to be reviewed by a prospective buyer and her counsel when considering the purchase of a building lot. A proposed construction project (in contrast to an existing house) must be buildable under various state and municipal land use regulations in addition to satisfying the state building codes and standards. A purchase and sale agreement for a building lot must contain appropriate contingencies to permit adequate review of applicable laws and regulations, permission to conduct tests and studies required to obtain permits and to verify buyer's requirements, and the right to obtain a building permit prior to being obligated to purchase.

Zoning

- Building permit obtained?
- Legal Standing of Lot (conforming/grandfathered)
 - If grandfathered, determine of nature and extent of grandfathered rights under state zoning act and local bylaw or ordinance
 - Review of application of Title 5 and Rivers Protection Act grandfathering rules
 - Determine when grandfathering expires
 - Definitive or ANR Plan Freeze Applicable?
 - Is merger with adjacent lot an issue?
- Boundaries of Lot (Depicted on Plan?)
- Dimensional and use requirements and limits of local bylaw or ordinance (grandfathering relevant?)
- Overlay district applicable to lot (e.g. watershed protection district)?
- Zoning relief (Variance, Special Permit, Section 6 Finding) necessary?—*before making binding commitment to purchase all zoning relief must be obtained and the applicable appeal period expired without appeal*
- Determine additional requirements of existing special permits and/or variances (exaction fees; contributions to common scheme; design/grading/development restrictions)
- Costs necessary to comply with zoning requirement (e.g. regrading, landscaping, stormwater management)
- Applicable Non-Zoning Land Use Bylaws (e.g. wetlands, floodplains, historic preservation, watershed protection, groundwater protection, wastewater disposal)

Planning

- Status of subdivision (subdivision approved by planning board?, road and other infrastructure completed?, bond adequate?, effect of continuation of work on occupancy)

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- Planning Board conditions fulfilled?, Lots released from Planning Board covenant?
- Status of completion of subdivision amenities and infrastructure
- Lot shown on Subdivision or Approval Not Required (ANR) plan?
- Access to Lot (directly from road, common driveway with easements)
- Availability of utility service (water, sewer, electric, gas, telephone, cable television)

Wastewater

- On-site Wastewater Disposal
 - Percolation Test
 - Deep Hole Test
 - Nitrogen loading limitations
 - Title 5/local bylaw requirements
 - Installation and maintenance of alternative technology (permitting, costs)
 - Disposal System Construction Permit available?
- Public Sewer System
 - hook up physically available/feasible?
 - sewer connection permit available?; any moratorium in place?
 - sewer connection fees and ongoing service costs

Potable Water

- Public Water Supply
 - quality and availability of water
 - hook up fees
 - source of water supply: public groundwater well, reservoir, MWRA, other
- Private Water Supply
 - quality and quantity of water
 - costs to drill well
 - water treatment necessary?

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Wetlands, Floodplains, and River Protection

- Determine if wetland resource areas and/or buffer zones are present on lot
- Determine if certified vernal pool or candidate for certification is present on lot
- Determine impact of local ordinance or bylaw on proposed construction
- Obtain Determination of Applicability or Order of Conditions from Conservation Commission
- Obtain floodplain special permit from Zoning Board of Appeals where necessary
- Review existing permits and plans and determine impact on proposal (e.g. stormwater management plan requires special grading or structure on lot)
- Review limits of activities on lot—consistent with proposed construction?
- Impact of River Protection Act on construction activity—will alternatives analysis need to be performed or modified to satisfy regulations with respect to proposed project?

Other State and Municipal Use Regulations

- Massachusetts State Sanitary Code
- Water rights and restrictions
 - G.L. c. 91 Permits for docks and floats; see 310 C.M.R. § 9.00 et seq.
 - Limits to ownership; rights of others
- Municipal Earth Removal bylaws and ordinances
- Municipal Scenic Mountains Regulations (Berkshire County)
- Massachusetts Municipal Scenic Roads Act
- Massachusetts Forest Land Controls Act
- Massachusetts Public Shade Tree Act
- Moratoria on issuing sewer connection permits; building permits
- Non-zoning municipal ordinances

Public Restrictions

- Conservation Restrictions
- Historic Preservation
- Watershed Protection
- Agricultural Preservation
- Affordable Housing

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- Environmental Restrictions (GL. c. 21E, § 6)

Private Restrictions

- Common scheme (subdivision) restrictions and covenants
- Other private restrictions, covenants and easements
 - review location, nature and extent of easements
 - review obligations, duties and limitations that arise from restrictions and covenants
- Time limitations of restrictions and covenants; extensions
- Condominium and Cooperative covenants, easements and restrictions
- Unrecorded condominium and homeowner's association rules and regulations
- Potential for regulation of design and grading
- Requirement for payment of dues and fees; liens
- Mechanism for release of restrictions or consent to design