

Disclaimer: The information contained in the below article is intended as an introduction into the process of building a single-family residential building. The information contained herein is not intended and should not be considered a complete or exhaustive description of all tasks or activities needed to be performed to permit and construct a single-family residential building. The reader is advised to consult and engage all necessary licensed professionals to assist the reader with all needed tasks required to build a single-family residential building in Massachusetts, including but not limited to due diligence review, planning, permitting, design, management, construction and oversight. No attorney/client or other professional relationships are established between the author and reader of this material.

## So, you want to build your dream home in Massachusetts . . .

Congratulations on your decision, or at least interest to build your dream home. A project like building a house is not for the faint hearted, even if you plan on hiring a general contractor to physically build the house. That is because to even hope to be successful, it takes tremendous effort and time to plan and oversee the building of a house from lot clearing to move in.

Part I. An overview of the initial steps of building your dream house.

### **Finding and buying land on which to build a house**

#### Finding land to build a house

Unless the land on which you are going to build your house is given to you, finding and buying the right parcel of land can be very challenging. If land is being given to you, you can jump right into designing your house and obtaining permits. Lucky you. However, if you are like most people you are going to need to search all possible avenues to find a good parcel of land on which to build. You don't need a Real Estate Broker to help you find/buy a building lot but, using

a Broker won't hurt. If you do use a Broker, I recommend that all real estate Buyers, including land Buyers, use an Exclusive Real Estate Buyer Broker. The "Exclusive" part means that the Buyer Broker does not list property for sale and should have no agenda to direct a Buyer to particular property that is for sale. Sometimes, a Buyer Broker knows of residential subdivisions that may be going through or recently received final approvals from the local city or town Planning Board. A Buyer can also find information for themselves about recently proposed/approved residential subdivisions by contacting the staff at the local municipal Planning Board.

### Reviewing/evaluating land to build a house

While finding land maybe something that an enthusiastic and motivated Buyer may try to do on their own, you should strongly consider hiring a Professional Engineer (PE) and a Professional Land Surveyor (PLS) to assist in your due diligence review before buying a building lot. The PE and PLS will review your prospective building lot for matters such as: land grading/elevation and storm drainage patterns, lot line/corner locations, soil conditions, flood zones, etc. Additionally, I recommend that a Buyer **not** rely on engineered drawings offered to the Buyer by the land seller / subdivision developer without review by a Buyer's own PE/PLS. There are several reasons for this including that the PE/PLS working for the land seller / subdivision developer may have designed the subject lot to require tremendous amounts of off-site fill soil to achieve proposed grades on the finished site. **BE ADVISED**, buying and trucking soil onto a site and compacting the soil can be very, very expensive. Also, a Buyer's PE/PLS can advise a Buyer about issues that can affect future use and enjoyment of a lot due to matters such as on-site / nearby wetland, streams and possible flood issues. Many times, building lots have easements on

the land to provide for physical access to other adjacent/nearby land, drainage or other utilities, etc. A Buyer's PE/PLS can help identify the presence of easements and establish where the easements are on the ground.

### Buying land to Build a House

It is my experience and opinion that a land Buyer should be very cautious about being one of the first to buy a building lot in a newly created residential subdivision. When a subdivision is first being built, there are many tasks that the developer needs to perform. Clearing trees and stumps for the future roads, installing utilities (water supply pipes, storm water drainage collection basins, manholes, pipes, and detention ponds, sanitary sewer pipes, electric/cable/telephone wires, etc.), constructing the roads, sidewalks etc. If a residential subdivision developer is not adequately capitalized and runs out of money, it can take years to get a subdivision fully constructed, even if the developer has a construction/performance bond on the subdivision. In fact, a land Buyer should be very cautious when buying land from any seller. Let's face it, a substantial number of residential subdivision developers do not have great professional business reputations. That being the case, any verbal statements made by a land seller/developer should be reduced to writing. This should include construction schedules and any matter that could be important to a land Buyer (e.g. construction vehicles must use secondary access/roads while working in the subdivision, time of day work limits, no on-site rock/stone crushing, when the final wearing course of asphalt will be installed on a subdivision road, if and when a private subdivision road will be presented for acceptance by the city/town as a public way, etc.).

As such, it is **critical** that a land Buyer have all documents and agreements reviewed by a Buyer's PE/PLS and by a qualified attorney before being signed. Remember, nobody cares what's in the contract until there's a problem. Lastly, it is very important to make sure that you have all building and environmental permits (including permit appeals) in place before you are contractually obligated to buy a lot for building your house.

## **Obtaining house building plans**

There are basically four choices for getting construction plans prepared for your new single family house: 1. Buy house plans from an internet-based plan supplier; 2. Hire a non-licensed "house designer"; 3. Use your selected General Contractor to draw your house plans; 4. Hire a licensed Registered Architect. Each method has pluses and minuses. Getting house plans from internet-based design companies can be a good option for some people. However, it can be difficult and expensive to get modifications to their stock house drawings. Also, these plans are usually copyright protected, so all copies must be purchased from the supplier. Hiring a non-licensed house designer can also be a good option for some people. House designers usually charge reasonable fees and can be local, making it easy to meet with him/her for reviewing plans together. Make sure to get and check references before hiring a non-licensed house designer. With today's computer aided design and drafting software, it can be easy for someone to prepare what appears to be good construction plans. However, as with most things, the devil is in the details and it's critical that your house plans contain appropriate design/construction details, specifications and material lists. Sometimes your selected construction general contractor can be a

source of house design plans. However, if your general contractor's building plans are not as detailed as they should be, issues can arise during construction. Also, relying on a general contractor for house plans can make it difficult to obtain construction estimates from competing general contractors. It's my opinion that a Buyer should keep the preparation of house plans separate from the General Contractor that will be constructing the house. Lastly, using a Registered Architect (RA) can also be a good option. However, using a RA can be expensive.

I advise that a Buyer give some thought to the type and layout of their dream home before buying the land. The shape and topography of your building lot can affect design elements of your dream house. For example, a building lot that is flat or has little slope can make it difficult and expensive to build a house with a walk-out basement or drive under garage. As such, it is important to at least share preliminary house layout plans with your PE/PLS to get their input on the land you are considering buying.

## **Obtaining building and environmental permits**

There are usual several permits needed when building a new house. The typical permits needed on a single-family residential building project include Building Department permit (with several sub-permits such as electrical, plumbing/gas, fireplace, etc.), Board of Health (if the property does not have access to a public sanitary sewer system or water supply), Water / Sewer Department permits and approval from the Conservation Commission.

## Building Department Permits

In order to begin building your new house you will need a Building Permit issued by the local municipal Building Inspector. Specific information you will need in order to get a Building Permit can be obtained from the local municipal Building Department. The state website also has building permit applications available at:

<https://www.mass.gov/doc/building-permit-application-one-or-two-family-dwelling-pdf/download>

In order to obtain a building permit, you will need reasonably detailed building plans and a site plan. The site plan typically must be prepared by either a PE or PLS. If your property does not have public sewer, then you will need an on-site septic system. See below for information regarding septic system permits. If you need an on-site septic system, usually the septic system design plan (approved by the Board of Health) can be used as the site plan with the Building Department. Additional permits issued through the Building Department include the plumbing/gas permit, electrical permit, fireplace permit (needed for wood, pellet and coal fired stoves). Also, the Building Permit Application must include home energy use rating information. Fees for building permits vary, so consult the local Building Department for permit and inspection fees. If your property does not have access to public water supply, you will need a permit to drill a water well from the Board of Health. If your lot has access to a public water supply and/or sewer system, you will usually need to get approvals from the Water/Sewer Department. Also, you (or your electrician) will need to contact the local electric, cable and/or telephone company for information about getting electric, cable and telephone service. Be advised that in most cities/towns,

Building Departments will initially issue a Building Foundation Permit. Following construction of the building foundation, an “As-built” Foundation Plan must be submitted in order to get the actual Building Permit. The As-built Foundation Plan is prepared by a PLS working for a landowner. This process helps to ensure that the landowner doesn’t start building their house on a foundation that is in the wrong location (e.g. being too close to a property line).

### Board of Health Permits

If you need an on-site septic system and/or water well, approvals/permits for these come from the Board of Health. A PE or a Registered Sanitarian can design a septic system. I advise the use of a PE because they have more educational and experience requirements than an RS. This can be important when dealing with proposed storm drainage matters, staking of the house and septic system for construction and obtaining “as-built” plans of the septic system and house foundation. The Board of Health also handles issuance of permits for drilling private water wells. Generally, an on-site water well must be drilled and tested before the Building Department will issue a Building Foundation Permit

### Environmental Permits (Conservation Commission)

Under MA law and regulations, a Conservation Commission permit is needed if any part of the project (e.g. driveway, water well, house, or proposed site grading is within one hundred feet of a “wetland”. That one-hundred-foot-wide area, adjacent to a wetland, is commonly referred to as a 100 Foot buffer Zone. For more information about the Massachusetts Wetlands Protection Act see MGL Chapter 131 Section 41; <https://www.mass.gov/guides/protecting-wetlands-in-massachusetts>. Also see MA Department of Environmental Protection Regulations 310 CMR 10.00

<https://www.mass.gov/files/documents/2016/08/vy/310cmr10a.pdf>. Also, many cities and towns have local environmental ordinances and bylaws with associated regulations. For example, see Town of Dartmouth [Town of Dartmouth Wetlands Bylaw and Regulations](#). **Do not under-estimate restrictions to using property under state and local environmental regulations.** The protection zone adjacent to “Rivers” (i.e. perennial flowing streams, creeks, brooks, etc.) is 200 feet. See <https://www.mass.gov/guides/rivers-protection-act-questions-answers> for reference. If your project needs approval from the local Conservation Commission, it is important to consult with an appropriate professional. I advise using a PE with experience appearing before Conservation Commissions. If you need approval from the local Conservation Commission be sure to allow time in your schedule for permit “appeal periods”. Following issuance of state regulated Conservation Commission approvals and usually following local municipal level environmental approvals, there are appeal periods where abutters and/or other interested parties can appeal approvals issued by the Conservation Commission. If such an appeal is filed against your project, it can significantly delay and/or eliminate the local approval. As such, I highly recommend that a property Buyer not close on purchasing property until all appeal periods have expired without any appeals having been filed.

## **Conclusion**

As I noted at the beginning, the information contained herein is intended only as an introduction to the first steps of building a new home in Massachusetts. Each of the steps described herein should be more thoroughly reviewed and evaluated before buying a building lot or designing your dream

home. Also, it is advisable for someone intending to build a new house to consult with a PE, PLS, attorney, building designers and building contractors to fully inform themselves of all the time and effort the project will require and possible risks associated with obtaining environmental and construction permits.

Good luck!

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