

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

ESSEX, ss

MISCELLANEOUS CASE
NO. 19 MISC 000390 (RBF)

_____)
NORTHEASTERN UNIVERSITY,)
)
Plaintiff,)
)
v.)
)
NAHANT PRESERVATION TRUST, INC., et al.)
)
Defendants.)
_____)

ORDER FRAMING QUESTIONS OF FACT TO BE TRIED BY JURY IN THE SUPERIOR COURT IN ESSEX COUNTY

The Complaint in this action was filed on August 9, 2019. The Answer was filed on September 16, 2019. Defendants (Nahant Preservation) filed a Motion Requesting that the Land Court Frame Questions of Fact to be Tried by Jury in the Superior Court in Essex County and Memorandum in Support Thereof on October 11, 2019. The plaintiff Northeastern University (Northeastern) filed an Opposition to Defendants’ Motion that Court Frame Jury Issues on October 21, 2019. Nahant Preservation’s Motion for Leave to File Reply was allowed, and their reply memorandum was filed, on October 22, 2019. The motion is decided without hearing, pursuant to Land Court Rule 6.

In the Complaint, Northeastern seeks a declaration that it has not made a dedication of its property in the Town of Nahant (town) to the town or to the public, and that the property is not subject to Article 97 of the Massachusetts Constitution. In the Answer, Nahant Preservation asks

for the opposite declaration, namely, that Northeastern has made a dedication of its property to the town or the public. Nahant Preservation demands a jury trial of these cross-claims regarding public dedication pursuant to Mass. R. Civ. P. 38, and moves that the Land Court frame issues to be tried in Superior Court pursuant to G.L. c. 185, § 15. Northeastern opposes Nahant Preservation's motion and argues that Nahant Preservation has no right to a jury trial because such a right is limited to actions at law and these claims are equitable in nature

If a party seeks purely equitable relief, there exists no constitutional right to a jury trial, and the differences between legal and equitable remedies are preserved. *Parker v. Simpson*, 180 Mass. 334, 346 (1902). Jury rights, on the other hand, are protected by the Massachusetts Constitution. art. 15 of the Declaration of Rights of the Massachusetts Constitution. Article 15 of the Declaration of Rights of the Massachusetts Constitution provides that “[i]n all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury.” *Id.* The Land Court is a court of equity. G.L. c. 185, § 15. “Except as provided in section sixteen, all cases in the land court shall be tried and all questions of fact finally determined by the court, unless a timely demand for jury trial is made.” *Id.* If a party has a right to a trial by jury and claims a jury trial in the Land Court, the Land Court can frame material questions of fact to “be entered by the moving party in the superior court for the county where the land lies for a jury trial thereon.” G.L. c. 185, § 15. Nahant Preservation has timely claimed a jury and timely made its request to frame jury questions. See *id.*; Mass. R. Civ. P. 38(b). The question in this case is whether or not Nahant Preservation is claiming more than equitable relief, and thus has a right to a trial by jury.

Nahant Preservation seeks a declaration that Northeastern dedicated land in the town on top of and to the east of Murphy Bunker to the public for use as an ecological preserve and for passive recreation through its public statements, actions, representations, use and/or course of conduct over the past 50-plus years. Dedication of land for public use is a common-law doctrine that is considered in conjunction with the protections of Article 97 of the Amendments to the Massachusetts Constitution. See *Smith v. City of Westfield*, 478 Mass. 49, 58-62 (2017). “Under our common law, land is dedicated to the public as a public park when the landowner’s intent to do so is clear and unequivocal, and when the public accepts such use by actually using the land as a public park.” *Id.* at 63. The dedication “may spring from oral declarations or statements by the dedicator,” or it “may consist of declarations addressed directly to the public,” but “[t]here are various ways to manifest a clear and unequivocal intent,” including “plan[s], sales statements, and repeated declarations that its open spaces ‘should never be encroached upon.’” *Attorney General v. Onset Bay Grove Ass’n*, 221 Mass. 342, 348 (1915); see *Smith*, 478 Mass. at 63.

The question is whether the determination that land has been dedicated to public use is a claim in equity, or, rather, is a claim that presents proper questions for a jury to decide. Claims to ownership of property have a right to a jury under article 15. *Gardner v. Essex County Comm’rs*, 183 Mass. 189, 190 (1903); *Wilkins v. Jewett*, 139 Mass. 29, 30 (1885). Thus, if the case involves title to property, the Land Court has found a right to a jury trial. See *Elysium, LLC v. UDrive, LLC, et al.*, Land Court Misc. Case No. 17 MISC 000691 (January 5, 2018) (Foster, J.) (finding a right to a jury trial on declaratory judgment claims of adverse possession and prescriptive easement); *Hutchins v. Maloomian*, 32 Mass. App. Ct. 950 (1992) (holding that

issues arising out of a claim to title by adverse possession present questions of fact to be tried by a jury).

The “principle of dedication, although of ambiguous origin, has been recognized in this state as in force here before [the 1846 dedication statute] and as still in force in cases not within the terms of that statute.” *Abbott v. Inhabitants of Cottage City*, 143 Mass. 521, 523 (1887). While Northeastern asserts the claims in this case are purely equitable, the common-law doctrine of dedication concerns a right in the public to title in property. The “consequence of a dedication is that ‘[t]he general public for whose benefit a use in the land was established . . . obtains an interest in the land in the nature of an easement.’” *Smith*, 478 Mass. at 63, quoting *Lowell v. Boston*, 322 Mass. 709, 730 (1948). Thus, dedication is akin to claims of adverse possession and prescriptive easements, and is therefore subject to a jury trial. See *Gardner*, 183 Mass. at 190 (“A dispute between the landowner on one side and the public on the other as to the existence of a common landing place is plainly a controversy concerning property.”); *Sprague v. Waite*, 34 Mass. 309, 320 (1836) (finding whether a strip of land had been dedicated to public use “is a question of fact for a jury, under all circumstances of the case”); see also *City of Boston v. Lecraw*, 58 U.S. 426, 436 (1854) (finding that “the presumption of a dedication is one of fact, and not an artificial inference of mere law, to be made by the court, yet it is an inference which the court advise the jury to make upon proof of certain facts”). Nahant Preservation has a right to a jury trial on the question of whether Northeastern has dedicated the land in question to public use, and is therefore entitled to have jury questions framed.

The questions to be framed will follow the elements of dedication to public use as set forth in *Smith, supra*. In *Smith*, the SJC held that “land is dedicated to public use as a public park when the landowner’s intent to do is clear and unequivocal, and when the public accepts such

use by actually using the land as a public park.” *Smith*, 478 Mass. at 63. “The clear and unequivocal intent to dedicate public land as a public park must be more than simply an intent to use public land as a park temporarily or until a better use has emerged or ripened. . . . Rather, the intent must be to use the land permanently as a public park.” *Id.* (citation omitted).


In accordance with the above, it is **ORDERED** that Nahant’s Motion to Frame Material Questions of Fact Pursuant to G.L. c. 185, § 15 is **ALLOWED**. The following questions of fact are framed, pursuant to G.L. c. 185, § 15, for trial by jury in the Essex Superior Court.

1. Did Northeastern University clearly and unequivocally intend to dedicate land on top of and to the east of Murphy Bunker in the Town of Nahant to the public for use as an ecological preserve and for passive recreation?
2. If the answer to Question 1 is yes, did Northeastern University clearly and unequivocally intend to permanently dedicate the above-described land to the public for such use?
3. If the answers to Questions 1 and 2 are both yes, did the public, generally, and/or the Town of Nahant on behalf of the public, accept Northeastern University’s permanent dedication of the land on top of and to the east of Murphy Bunker in the Town of Nahant for use as an ecological preserve and for passive recreation?

Any issue presently framed may be modified or amended through appropriate order by the court. Nahant Preservation shall, within the time set by law, shall enter and file with the Superior Court for Essex County, a certified copy of this Order, and of all other pleadings and

other material papers filed in this court, along with a certified copy of the docket of this case, and shall notify this court and all counsel in writing that they have done so.

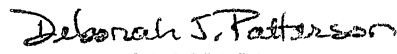
SO ORDERED

 By the Court (Foster, J)

Attest:

Dated: October 24, 2019

Deborah J. Patterson, Recorder

A TRUE COPY
ATTEST:

RECORDER