



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## Massachusetts Appeals Court Makes Clear in ‘Town versus Gown’ Controversy that “Public Dedication Doctrine Is Not Intended to Catch an Owner by Surprise”

BY AMANDA ZURETTI • OCTOBER 16, 2024

Ending four years of litigation in consolidated cases filed by the Nahant Preservation Trust, Inc. (“Nahant”) and Northeastern University (“Northeastern” or “the University”), the Massachusetts Appeals Court determined that “no jury could reasonably find that Northeastern clearly and unequivocally intended, let alone did – permanently dedicate the disputed area (or any portion of its property) to the public for use as an ecological preserve and for passive recreation. The public dedication doctrine is not intended to catch an owner by surprise. As noted, our cases make clear that “[t]he owner’s acts and declarations should be deliberate, unequivocal and decisive, manifesting a clear intention permanently to abandon his property to the specific public use.” See *Nahant Pres. Tr., Inc. v. Ne. Univ.*, 104 Mass. App. Ct. 698, 710 (2024).

The dispute between a group of Nahant’s citizens and the University arose in 2018 when Northeastern announced plans to build a new 55,000 square foot research facility on a portion of the University’s land in Nahant. The Nahant group asserted that Northeastern had, through its promises and conduct for over 50 years, dedicated the land to public use.

Article 97 of the Amendments to the Massachusetts constitution provides that “[t]he people shall have the right to clean air and water ... and the natural, scenic, historic, and esthetic qualities of their environment.” It declares a “public purpose” in “the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources.”

Land dedicated to a public use that is protected by Article 97 cannot be changed to a different use absent a two-thirds vote of the General Court, and, after the enactment of An Act Preserving Open Space in the Commonwealth (codified at M.G.L. c. 3, § 5A) approved on November 17, 2022, compliance with the Massachusetts Public Lands Preservation Act.

Noting that parties had provided well-reasoned and detailed memoranda of decisions and orders, the court observed that while “the [Nahant] plaintiffs focus on evidence that, at various times, Northeastern expressed *its intent* to have the disputed land used as a preserve or for similar conservation uses protected by the prior public use doctrine or by art. 97, at trial, the plaintiffs must prove *more* than Northeastern’s intent to dedicate the disputed area to such uses. They must also prove that the disputed area was ***actually dedicated to the public***, because neither the prior public use doctrine nor art. 97 applies to privately held land.” (emphasis supplied).

The court likewise rejected the Nahant plaintiffs’ promissory estoppel claim that the Town of Nahant’s reliance on Northeastern’s historical uses of the property to include much of Northeastern’s land as “open space” in its planning documents and to adopt restrictive zoning for the area, actions that it would not have taken if it had known that Northeastern would expand the center in the manner proposed.