STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

Highland Park Community Services Association, Inc.,

Plaintiff,

vs.

Anthony Paul and Laurie Paul,

Defendants.

File No. 09-2016-CV-00923

MEMORANDUM OPINION AND ORDER ON PRELIMINARY INJUNCTION

[¶1] Plaintiff Highland Park Community Services Association ("Association") seeks a preliminary injunction requiring Association members Anthony and Laurie Paul ("the Pauls") to remove a trampoline in the front yard of their Highland Park home.

[¶2] The Pauls own Lot 16, Block 6, Highland Park Subdivision, Cass County, North Dakota (the "Paul Property"). As part of the Highland Park Subdivision, the Paul property is subject to the Declaration of Covenants and Restrictions of Highland Park ("the Covenants") which is maintained, administered, and enforced by the Association. The Pauls are aware of the Covenants and recognize the Paul Property is subject to the Covenants.

[¶3] The Covenants provide:

> "Accessory structures are not permitted in the ***front yard setback*** and must be compatible with the main structure. The height of such building shall be limited to fifteen (15) feet."

See Article VII, § 3, of the Covenants, attached as Exhibit A to the Affidavit of Thomas Martin, previously submitted to the Court (emphasis added).

[¶4] The Covenants define "front yard setback" as follows:

> (c) Front Yard: A front yard of the following is required: . . . lots 1 thru 21, Block 6, of not less than 60 feet . . .

[¶5] In 2014, the Pauls purchased a trampoline with the intention of placing the trampoline in their back yard at some point; however, the Pauls' home is along the Red River, and as a result of frequent flooding in the past, the Pauls' back yard was in poor condition.

[¶6] Over the course of the past two years, the Pauls have been in the process of conducting clean-up, repairs, and improvements to their back yard to remedy the flood damages, including removal of dead trees.

[¶7] The Pauls have already procured a contractor to install a sprinkler system and to re-seed their back yard this spring.

[¶8] Due to the condition of their back yard and the Pauls' efforts to conduct clean-up and repairs, the Pauls could not initially place the trampoline in their back yard; instead, they placed it in the front of their home, beyond 60 feet from the curb of their property, but less than 60 feet from their strict property line easement.

[¶9] If the Pauls placed the trampoline in their back yard now, the trampoline would impede their contractor's ability to properly install their sprinkler system and to re-seed their back yard; similarly, if the Pauls placed the trampoline in the back yard too soon following seeding, the seeding would not have had an opportunity to establish a foundation and the trampoline would likely ruin at least portions of the newly re-seeded yard.

[¶10] The Association has made at least two (2) formal written requests to remove the trampoline over the past number of months. No formal response was made by the Pauls.

[¶11] Over the winter of 2015-16, Anthony Paul communicated orally with a board member of the Association on several occasions, Mr. Matt Frisk, and requested that Mr. Frisk communicate to the Association board that the Pauls *planned* to relocate the trampoline early in the spring of 2016, following re-seeding of their back yard, but there was no date certain provided. Thus the Association brought this action.

[¶12] The Pauls' contractor has agreed to commence re-seeding the week of April 18, and the Pauls hope to have a foundation of grass established within the next four to five weeks, at which time the Pauls plan to relocate the trampoline.

[¶13] Basically, the Association contends that the trampoline is a prohibited "structure" within the sixty (60) foot setback. This Court struggles with the notion that a residential trampoline is a structure. Normally, the structure denotes: 1) something of some permanence; 2) built by putting parts together ; and 3) that stands on its own. Permanence is missing here. That is further complicated by the inartful drafting of the second sentence of Article VII, paragraph 3, which describes the height of the "building" (structure). This suggests someone was thinking more narrowly, i.e., structure as a building. A trampoline is not a building.

[¶14] On the separate issue of the 60-foot setback generally, and whether the offending trampoline is within that prohibited zone, specifically, the evidence remains

unclear. The Association's Exhibit D – certainly offered to try and help the Court – actually raises more questions than it answers.

[¶15] Thus, on this record, the Court cannot find that either party "has a substantial probability of success on the merits" as required by N.D.C.C. § 32-06-02. F-M Asphalt, Inc. v. North Dakota State Highway Department, 384 N.W.2d 663, 664 (N.D. 1986). Accordingly, the Association's Motion at this stage is **DENIED.**

[¶16] Indeed, this trampoline should be moved – and sooner, rather than later. The homes within the Highland Park neighborhood are large, beautiful, and expensive homes. Trampolines, large gas grills, lawn furniture collections, and the like should be in the backyard. However, this Court cannot order such relief at this time.

[¶17] This case will be put on for a scheduling conference in June (with an anticipated trial date on the request for a permanent injunction if the matter is not otherwise resolved).

IT IS SO ORDERED.

Dated this 30th day of April, 2016.

BY THE COURT:

Douglas R. Herman
Judge of the District Court
East Central Judicial District