

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ROBERT AWKARD, et al.

Plaintiffs,

v.

**MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION,
et al.**

Defendants.

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Case No.: RWT 08cv1562

MEMORANDUM OPINION

A hearing on Defendant Maryland-National Capital Park and Planning Commission’s Motion to Dismiss the Second Amended Complaint (ECF No. 75)¹ and Defendant Macris, Hendricks & Glascock, P.A. and Defendant Douglass H. Riggs, III’s Motion to Dismiss Plaintiffs’ Second Amended Complaint (ECF No. 78) is presently scheduled for March 7, 2011 at 10:30 a.m. ECF No. 86. On February 24, 2011, Plaintiff William Rounds, through new counsel, filed a motion to continue the hearing, stating in support of his motion that he had only been retained by Rounds two days prior. ECF No. 93. Rounds’ new counsel requested a thirty day continuance of the hearing to allow him to review the voluminous pleadings in this case and to determine whether to file a motion seeking leave to file a second amended complaint on Mr. Rounds’ behalf. *Id.* The Maryland-National Capital Park and Planning Commission opposes Rounds’ motion to continue, arguing that Rounds unnecessarily delayed in obtaining replacement counsel after his previous counsel withdrew. ECF No. 96. Defendants Sara and Paul Arey also

¹ Defendants Paul and Sara Arey concurred in Maryland-National Capital Park and Planning Commission’s Motion to Dismiss. ECF No. 76

oppose the continuance, arguing that a continuance will cause them to experience financial hardship because they cannot sell their property until this litigation is complete. ECF No. 97.

The Court has no reason to doubt that Rounds had legitimate difficulty in obtaining replacement counsel to act on a *pro bono* basis. This litigation has been long, and involves multiple, complex issues regarding land use and federal constitutional law. Review of the pleadings in this case will take considerable effort and diligence on behalf of Rounds' new counsel, and the Court finds that there is good cause to grant a brief continuance of the motions hearing.

Further, through no fault of his own, counsel for the other Plaintiffs in this action filed a Second Amended Complaint purportedly on Rounds' behalf. *See* ECF No. 74. Rounds was not represented by those attorneys, and considerable confusion has ensued. The Maryland-National Capital Park and Planning Commission argues that this confusion counsels against granting the motion for a continuance; however, the Court finds that any error was that of counsel for the other Plaintiffs, not Rounds, and it is therefore unreasonable to hold Rounds or his new counsel accountable for that error. The Court has serious concerns about limiting Rounds to pursuing allegations contained in the Second Amended Complaint, when it is clear that he did not consent to its filing. At the very least, Rounds, assisted by new counsel, should be given a brief period of time in which to consider whether to join the Second Amended Complaint or seek leave to file his own second amended complaint.

Though the Court is sympathetic to the negative impact this litigation has purportedly had on the Areys' ability to sell their property, a brief continuance is necessary to protect Plaintiff Rounds' interests. The Court believes that a consolidated motions hearing—in which all motions to dismiss will be heard as to the complaints of all Plaintiffs—will, in the end, expedite the

