

CASE STUDY 004

LET'S TALK ABOUT FOLS

The official Junta de Compensacion Statutes instruct us to share the costs of Cabrera Poligono 1 Maintenance and Infrastructure in proportion to land ownership. This means that Home Owners and Land Owners (Developers) should share the costs in proportion to their respective land holding.

The Junta has not followed the legal Statutes since 1993 when the concept of the so-called "1993 Agreement" was established. The idea was that the Home Owners would pay for all the Maintenance costs and the Land Owners (Developers) would cover the Infrastructure costs.

This case study will explore:

- **The significance of First Occupation Licences and the role played by the Town Hall in the award of FOLs.**
- **How Cabrera Poligono 1 came to be divided into 19 Development Zones (Functional Units) and which Zone you fall under.**
- **The progress made on the urbanisation of each zone and where the Homeowners' financial contributions for infrastructure have been directed.**

What is a FOL or "First Occupation Licence"?

For a better understanding, please take a look at the following link:

<https://www.spanishpropertyinsight.com/legal/licence-of-first-occupation/>

When issuing FOLs on properties, there is quite a strict process that operates in Spain to ensure that any commitments that the Developer made during the planning of the property are put into operation. This might include providing the required **infrastructure around the development** or repairing any damage that has been caused.

The FOL is of importance to Homeowners as it has significance when selling your property, getting a mortgage on your property, renting your property, changing the electricity contracts on your property etc.

We know that the **infrastructure around the development** is incomplete in Cabrera as the Developers have not fulfilled their obligations in terms of completing the infrastructure. This is common knowledge.

Given the significance of the FOLs and given that the infrastructure of Cortijo Cabrera Poligono 1 sector R3-1 is incomplete, some Homeowners might be wondering how it came about that certain Homeowners have been awarded FOLs on their properties while others watch from the sidelines?

The Mayor of Turre is also interested to find out how FOLs came to be issued to certain Homeowners by the Town Hall while he and so many Homeowners are under the impression that they have to wait for the Urbanisation to be complete. The Mayor therefore initiated Court proceedings in 2017 to investigate the municipal management around Cortijo Cabrera. We are still awaiting the outcome of these Court proceedings as the Court is still gathering information.

It is suspected that a questionable process of carrying out 'partial urbanisations' may have been carried out. That is, by dividing Cabrera into 'segments' and completing the infrastructure in that particular segment, it seems that FOLs could have been issued by means of some 'special arrangement' with the Town hall.

It seems that one of the potential benefits of possessing a legitimate FOL is that you are theoretically exempt from any future infrastructure costs. This leaves a large number of excluded Homeowners watching their neighbours seemingly being absolved from the risk of future infrastructure costs by the acquisition of a questionable FOL from the Town Hall.

In order to understand the sequence of events, we have prepared:

APPENDIX A: TIMELINE CHART

This shows how we came to be in the position where some of the Homeowners have been granted FOLs and the less favoured Homeowners find themselves without FOLs.

APPENDIX B: CABRERA ZONES AS PER PLAN PARCIAL

This enables you to identify which zone you fall into as a Homeowner.

APPENDIX C: URBAN PLANNING FRAMEWORK

This provides a simple overview of the Planning terminology to aid the understanding of the TIMELINE CHART.

APPENDIX D: CURRENT INFRASTRUCTURE PROGRESS

This will provide you with:

- The current infrastructure progress in your particular zone. (2016 snapshot)
- The overall budget and how well the developers have fared against the budget
- An explanation as to why Homeowners have already paid for their fair share of the infrastructure costs.
- A final summary of where we are now

APPENDIX A - TIMELINE CHART

	Date	Action \ Issue	Result	Comment
1	2007	Change of Law in 2007	<p>Prior to 2007 the custom and practice of Turre Town hall was to issue a "letter of no objection" to service companies (in Cabrera´s case this would have been to enable provision of a permanent electrical connection to Endesa). This is why houses constructed prior to 2007 have a legal electrical connection even though they did not have a Licence of First Occupation (though there may be some exceptions).</p> <p>The law changed in 2007 and it became illegal for a service company to connect a home without a Licence of First Occupation. This explains why some houses completed after this date without a Licence of First Occupation remain on "builder supply electricity" (ignoring the lack of capacity of the single transformer)</p>	
2	18-Mar-08	Junta application to Town Hall to divide urbanisation into 19 zones (functional units)	<p>The TH approved the application conditional on Zones 2, 4 and 10 being given priority for execution, followed by the Town Hall plots.</p> <p>As will be seen later on, the above zones were not given priority. Instead, Zones 1 and 8 were given priority. These two zones are largely owned by the two main Developers on the Junta.</p>	<p>A Town Hall technical document produced in February 2016 identifies that in 2008 the concept of 19 zones (Functional Units) was introduced with certain conditions such as:</p> <p><i>Given that the proposed functional units numbers 2, 4, and 10 are those that resolve the external connection, both for road access and urban services, of the total of the polygon they will be the preferred ones to execute and then all those that provide services to the plots of lucrative municipal use and equipment.</i></p>

3		<p>IMPORTANT NOTE:</p> <p>A Special Quorum is required to modify the Statutes and the Rules of Conduct, as well as approval of the Plan de Compensation. Given that a number of resolutions taken at the 2008 AGM involved a change to the overall project plan it would be expected that the special quorum requirements would be applicable.</p> <p>i.e. A favourable vote from the majority of members (given that there are 200+ houses this implies 101 minimum favourable votes) and 60% of the participation quotas (ie. land-ownership). Given that neither of these two criteria was met, the legal standing of these resolutions is in doubt.</p>		
4	AGM 21 November 2008	<p>Item number 4 - Approval of the 19 Phases of the urbanisation By splitting Cabrera into 19 zones. It means that once the infrastructure is completed in each zone, it can be officially recognised and receives all the necessary paper work, rather than waiting for the infrastructure to be completed in the whole of Cabrera, which can take numerous years. It was deemed a fairer system for all, which can then recognised by Turre Townhall. It was stated that Turre Townhall has already given their approval for these 19 zones, as they considered it beneficial for all concerned. The Assembly proceeded to approve the 19 phases of the urbanisation. The developer abstained from the vote.</p>	<p>The result was that the 19 Zone approach was introduced by means of a non-valid vote. See IMPORTANT NOTE above.</p> <p>The result was that the Junta awarded themselves the power by means of a non-valid vote to transfer the ‘buildability’ between plots without much scrutiny. This did power did not mention alterations to the Zone boundaries.</p>	<p>A Special Quorum would be required to approve this resolution.</p> <p>It should be noted that the Town Hall had already approved this change. The decision making process was therefore back to front. The Junta should have obtained approval at an AGM prior to approaching the Town Hall. Similarly, the Town Hall was at fault for approving such a change without first seeking the approval from the Junta AGM.</p> <p>AGM Item 4 was approved by a non-valid vote.</p>

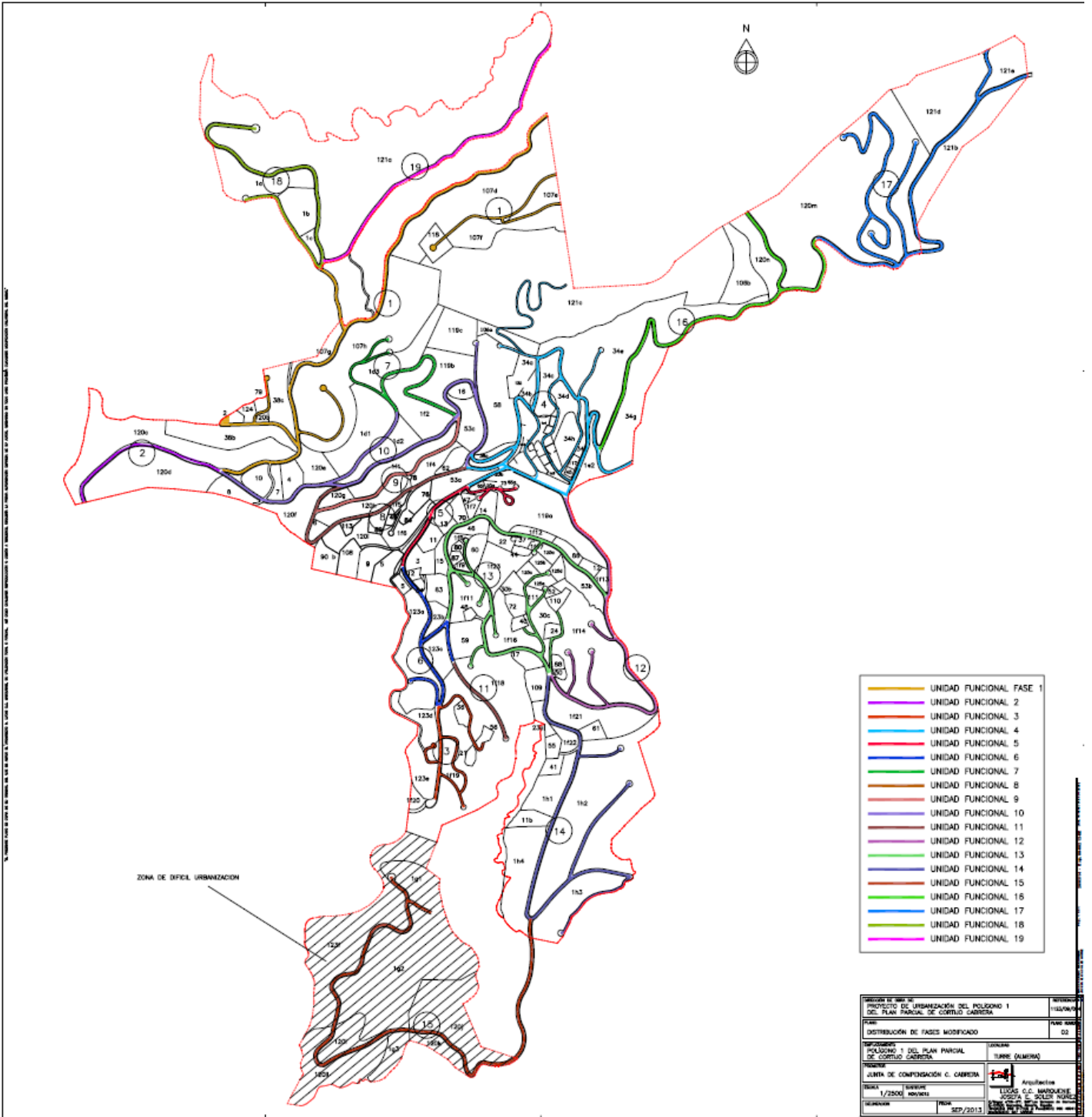
5	AGM 21 November 2008	<p>Item number 5 - Approval of the modification to the Plan Parcial of the 5th May 2008. The Junta explained that this is to allow the transfer of allowable 'buildability' between building plots. The transfer will be from those plots where building is impossible or undesirable. It does not increase the total square meters of build stipulated for Plan Parcial Polígono 1. Previously this type of modification did not require the general assembly's approval, however new regulations State that the Assembly must approve this before it can go ahead. Transfer of buildability from one plot to another can only be passed if it does not conflict with the interests of the owners. The General Assembly then approved this modification to the Plan Parcial of the 5th May 2008. The developers abstained from the voting.</p>	<p>The result was that the Junta awarded themselves the power by means of a non-valid vote to transfer the 'buildability' between plots. This did not include for alterations to the Zone boundaries.</p>	<p>A Special Quorum would be required to approve this resolution.</p> <p>The consequence of this is that the Developers were able to increase the density of houses in particular zones with a raft of 'buildability transfers'.</p> <p>AGM Item 5 was approved by a non-Valid vote.</p>
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6	AGM 21 November 2008	<p>Item number 6 - <i>Delegate the Junta de Delegados to approve any future modifications to the urbanisation without prejudice to the General Assembly. Approval of this item on the agenda will negate the need for the Town Hall to send notifications out to all the proprietors or to the General Assembly each time there has been a modification to the Plan Parcial as outlined in the Agenda item number 5 above. It was approved by the majority of the general assembly by a show of hands on the understanding that if the Junta Delegados approve this modification this information will then be made available at the Junta surgery meetings. The developers abstained from voting.</i></p>	<p>It is believed that these changes consist solely of power to 'transfer of buildability' and no other unilateral changes to the Plan Parcial. ("as outlined in Agenda Item number 5")</p> <p>The result was that the Junta awarded themselves the power by means of a non-valid vote to transfer the 'buildability' between plots without much scrutiny. This did not include alterations to the Zone boundaries.</p> <p>One of the concerns is that this power might give the Developers the freedom to create more plots, increase the density of the urbanisation, and thereby raise the demands made on the existing infrastructure such as electricity transformers, water supplies and roads.</p>	<p>A Special Quorum would be required to approve this resolution.</p> <p>The Junta surgery meetings have not taken place for several years.</p> <p>The decision to award such powers to the Junta could not legally be taken by those members present.</p> <p>AGM Item 6 was approved by a non-Valid vote.</p>
7	Town Hall Technical Document (February 2016)	<p>The Town Hall technical document (February 2016, page 3), identifies the provisional reception of works with respect to Zone 8 on 12th November 2014 as the urban works are deemed to be 100% complete.</p>	<p>The result was that Houses in Zone 8 were given FOLs.</p>	<p>By 2020 only Zone 1 and Zone 8 were classified as being "100% complete" with respect to urbanisation works.</p> <p>The priority zones identified by the Town Hall as part of their authorisation of the 19 zones, remain largely "100% incomplete". The exception being zone 4 which was deemed to be 91% complete.</p>

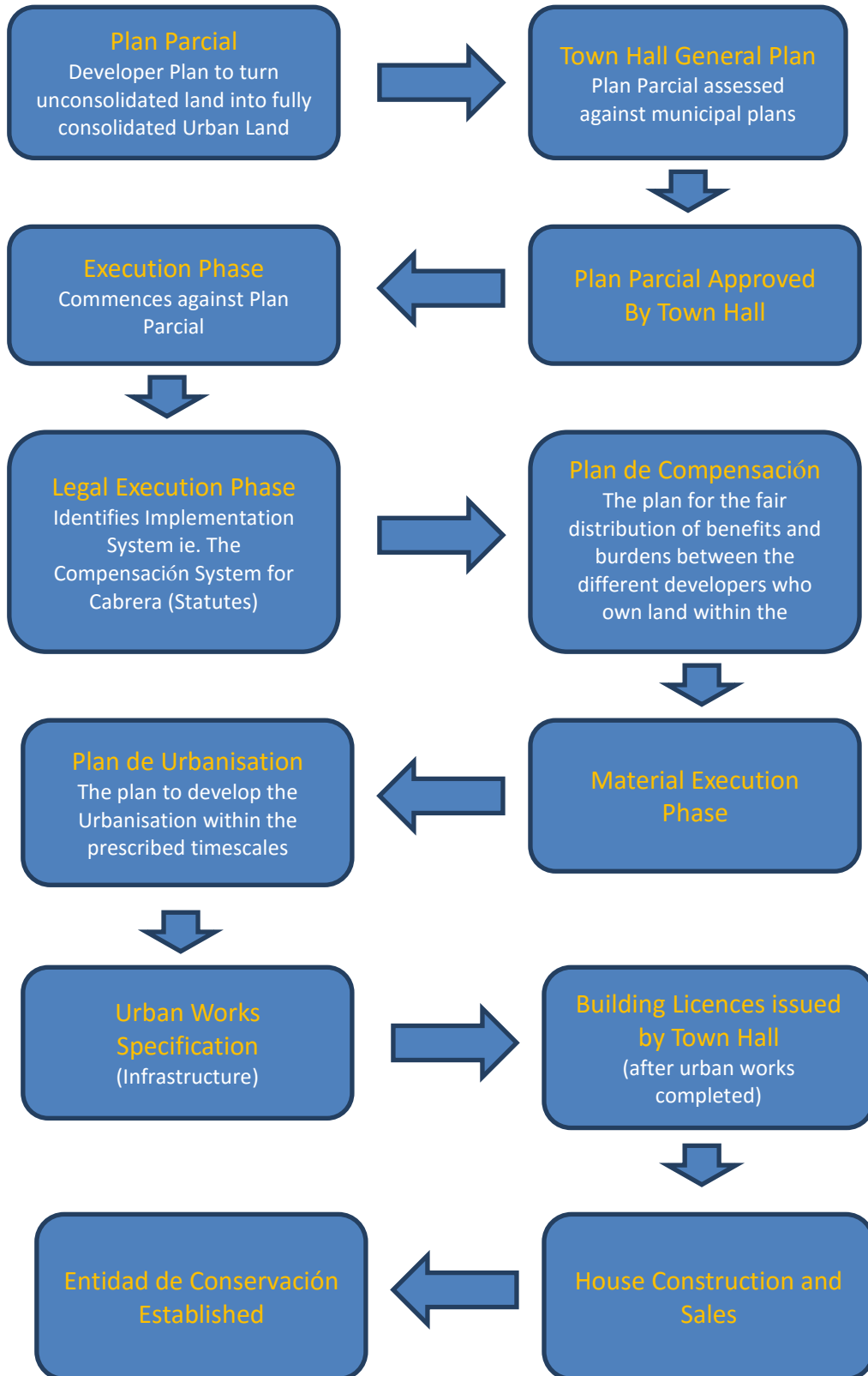
8	Town Hall Technical Document (February 2016)	The Town Hall is asked to accept the urban work in Zone 1 on 30th June 2015 as it is deemed 100% complete with respect to urban works.	The result was that Houses in Zone 1 were given FOLs.	<p>It should also be noted that Zone 1 essentially runs along Av. La Pilica with a spur up to "The Ranch". As of 2016, the infrastructure spend was classed as 100% complete with a total spend of €532,109.53.</p> <p>This zone was impacted by a raft of 'buildability transfers' in the Boletin dated 18 July 2007 which included the formation of 19 sub-plots (107d1 to 107d19) out of Plot 107d alone.</p> <p>So, of a total recognised spend of €1,387,809.57 on infrastructure in Cabrera, €532,109.53 (39.12% of the total) was spent on infrastructure for an area which contains a handful of houses but which is now ripe for development. All that seems to be missing is the electricity supply. However, it has been proposed that the Homeowners will fill this gap by taking out loans to install transformer infrastructure costing €239,580.00 plus interest.</p> <p>Thus, the infrastructure for the construction of future homes in Zone 1 will be in place while many of the 'fully paid up' Homeowners have been left without the appropriate infrastructure for 20 years or more.</p>
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9	Open Meeting 24 April 2014	<p>At an Open Meeting, 24th April 2014, it was stated by a member of the Junta that although the urbanisation is split into 19 zones, "pockets of Entidades de Conservación" could not exist as each zone would have to be completely independent to the infrastructure and services of the Junta.</p>	<p>The result of this "Partial Urbanisation" approach is that it is believed by some that preferentially treated Homeowners who hold licences of first occupation (FOLs) might be exempt from all future urbanisation charges.</p> <p>The Court in Vera is currently investigating (since 2017) the legality of issuing FOL's on the basis of partial urbanisation in Cabrera Poligono 1. This was initiated by the Mayor of Turre, Martin Morales and might explain some of the negativity shown towards him by some parties.</p>	<p>It is impossible to achieve "independent zones of urbanisation" as the water supply, mains sewage and roads are infrastructure assets of the total of Cabrera. So, how could the Town Hall possibly recognise individual zones as complete and issue Licences of First Occupation if they are part of the total of Cabrera which is incomplete with respect to total urbanisation works? The two scenarios cannot co-exist.</p>
10	Zone Boundary Modification 2014.	<p>The authority was given to the Junta (by means of an invalid vote) to make limited changes to the Plan Parcial without further authorisations from the AGM.</p> <p>The minutes imply that this approval would be for the transfer of 'buildability' from plot to plot and / or the realignment of plot sizes and movement of 'buildability' in cases where the terrain necessitated it.</p> <p>The Town Hall technical document identifies 3 adjustments with references to specific plots and zones.</p>	<p>The following adjustments subsequently took place:</p> <p>Detail Study for the realignment of Alignments of plots 1f18b2 and 1f19 of the project of compensation of polygon 1; definitive approval by plenary agreement dated 22 December 2008, published in BOP n ° 13 dated January 21, 2009.</p> <p>Detail Study for the readjustment of Alignments of plots 1f11-b and 1f11-c of Polygon 1 of the Partial Plan of Sector R-3; Definitively approved by plenary agreement dated February 29, 2012, published in BOP n ° 87 dated May 8, 2012.</p> <p>Modification of Functional Units 8, 9 and 10 of the Urbanization Project of Polygon 1 of the Partial Plan of Sector R-3. Definitive approval by agreement of the Local Government Board dated October 22, 2014, published in BOP n ° 215 dated November 10, 2014.</p>	<p>It is worth noting that the "Modification of Functional Units 8,9,10" seems to involve the moving of the zone boundaries by the Junta. So, we are not talking about 'transfers of buildability' between plots because of "buildability difficulties due to the nature of the terrain" any more. So, in 2014, it seems that the Junta exceeded its powers even further to change the boundaries of the zones.</p> <p>The underlying reason seems to have possibly been to include the homes of selected people into Zones which had been awarded FOLs on 12 November 2008. The acquisition of a FOL would then make such properties far more 'sellable' and probably at a better price.</p>

APPENDIX B - Cabrera Zones as per Plan Parcial



APPENDIX C - URBAN PLANNING FRAMEWORK



APPENDIX D

CURRENT INFRASTRUCTURE PROGRESS

When considering the future infrastructure costs for the Urban Works in Cabrera, we need to understand what the Developers really committed to when they entered into the 1993 “Agreement”. In 1993 the Developers sold the Homeowners the notion that they would “absolve” them from paying the cost of infrastructure provision. It needs to be understood that the Developers would have expected to recover these costs anyway from each purchaser as part of the selling price of the house or plot of land.

The implementation of the 1993 “Agreement” simply reinforces that fact that existing Homeowners have already paid their fair share of infrastructure costs. Certainly, it is clear that all of the required infrastructure spend since 1993 **must have been embedded** in the selling price of the houses. By no stretch of the imagination, were the Developers simply going to gift the infrastructure to the Home owners.

So, it seems that all Homeowners have already paid their share in full for the infrastructure that needs to be provided for their homes in terms of the Plan Parcial. If this were not the case then a charge would be recorded against the property in a public deed inscribed in the Property Register (as per the Junta Statutes Rule 16). If there is no charge recorded against the land / property then the infrastructure has already been fully paid for. A homeowner should not be asked to pay for the urbanisation costs again.

The following table provides a progress report on the Infrastructure development in Cabrera as of 2016:

Functional Unit (ZONE)	% of Total Infrastructure Spend	Infrastructure % complete	Total Build Cost per Zone	Remaining Build Cost	Value of work completed
1	15.0%	100.00%	€ 532,109.53	€ 0.00	€ 532,109.53
2	1.8%	0.00%	€ 64,991.67	€ 64,991.67	€ 0.00
3	3.6%	90.24%	€ 127,821.33	€ 12,481.75	€ 115,339.58
4	9.5%	91.00%	€ 338,607.81	€ 30,474.70	€ 308,133.11
5	2.2%	84.00%	€ 77,781.29	€ 12,445.00	€ 65,336.29
6	3.0%	0.00%	€ 104,670.25	€ 104,670.25	€ 0.00
7	3.5%	91.84%	€ 124,285.49	€ 10,143.13	114,142.36
8	2.3%	100.00%	€ 80,842.74	€ 0.00	€ 80,842.74
9	1.7%	0.00%	€ 60,926.57	€ 60,926.57	€ 0.00
10	6.1%	0.00%	€ 216,985.00	€ 216,985.00	€ 0.00
11	1.0%	0.00%	€ 35,205.22	€ 35,205.22	€ 0.00
12	5.3%	91.00%	€ 188,907.65	€ 17,001.69	€ 171,905.96
13	8.5%	0.00%	€ 303,065.15	€ 303,065.15	€ 0.00
14	6.9%	0.00%	€ 244,066.15	€ 244,066.15	€ 0.00
15	7.1%	0.00%	€ 251,884.73	€ 251,884.73	€ 0.00
16	5.2%	0.00%	€ 185,990.92	€ 185,990.92	€ 0.00
17	9.5%	0.00%	€ 336,411.04	€ 336,411.04	€ 0.00
18	4.2%	0.00%	€ 147,758.90	€ 147,758.90	€ 0.00
19	3.5%	0.00%	€ 125,085.43	€ 125,085.43	€ 0.00
TOTAL:	100.0%	39.12%	€ 3,547,396.87	€ 2,159,587.30	€ 1,387,809.57

The Cabrera Statutes are centred primarily on the fair distribution and allocation of land, the fair returns on the land, and the fair allocation of development costs between Landowner Developers (not subsequent House Purchasers).

The fact that the homeowners are trapped into paying for maintenance costs until the urban works are completed therefore results in the developers paying nothing toward maintenance costs and recovering any urbanisation costs from homeowners through selling prices. Therefore, there is no incentive to ever finish the missing infrastructure on existing urban works.

The lack of infrastructure completion by the Developers has misled Homeowners into the idea that we have to fund this Developer failure into the future by a blind application of the statutes.

This does raise the significant concern that we would be paying for the infrastructure twice if we have to make any further infrastructure contributions. Profits have been taken and not reinvested to complete the urban works.

When the Court decision of 13 December 2019 is re-instated, the Statutes will have to be followed. Existing Homeowners should not have to make any further infrastructure contributions, but will need to pay their fair share of the Maintenance contributions (as will the Developers) until an Entidad de Conservación is established.

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So, where are we now?

1. Powers to create ‘partial urbanisation zones’, move zone boundaries and transfer ‘buildability’ between plots have been assumed by the Junta on the basis of non-valid votes at a 2008 AGM.
2. FOLs have been issued by the Town Hall on the basis of partial zones of urbanisation. The Vera Court is investigating this. Some Homeowners have even been granted FOLs while still on builder’s electricity supply.
3. It seems that Zone boundaries have been moved to enable selected people to fall into a zone that was due for 100% completion so they could obtain FOLs, making it easier and more profitable for them to sell their properties.
4. One of the concerns is that the Junta has awarded itself powers that might give the Developers the freedom to create more plots, increase the density of the urbanisation, and thereby raise the demands made on the existing infrastructure such as electricity transformers, water supplies and roads. However, the increased density is likely to be more profitable for the Developers.
5. Homeowners have already paid for the required infrastructure as presented in the Plan Parcial as it was embedded in the purchase price of their homes. They are now being coerced into paying for additional infrastructure such as the two transformers on Av. Abenjoar and Av. de Cortijo Grande. (€239,580.00 + interest, homeowners to be committed to 5 year loan).
6. Homeowners have not been provided with the infrastructure that they have already paid for. Instead, the funds (39.12% of the total recognised infrastructure investment, € 532,109.53) have been migrated to new development zones such as Zone 1 which is now classed as 100% complete.
7. The new transformers (to be paid for by the Homeowners from the Maintenance budget) will ensure that there is sufficient supply for the future homes in Zone 1.
8. The very contentious 3rd water deposit on the Sopalmo Road will also support the Zone 1 development zone. (€36,584.00 , paid for by the Homeowners from the Maintenance budget)

9. In Zone 8, the road had to be resurfaced before the zone could be classed as completed. The work was carried out by Nila at a cost of € 20,000, again paid for by the Homeowners from the Maintenance budget.

10. The Urbanisation timeline is provided below:

1	Bases and Statutes of the Compensation Board of Poligono1 approved at Plenary session.	7-Jun-90
2	1993 Agreement - AGM	14-Jan-93
3	Compensation Project for Poligono 1 of the Partial Plan approved by Turre	17-Aug-95
4	Project of Compensacion Approved: AGM	29-Oct-96
5	Project of Compensacion still not approved (re-registering of properties required)	12-Nov-97
6	Project of Compensacion Approved	1998
7	Project of Urbanisation delayed by Developer conflicts	1999-2000
8	Plan Parcial approved by plenary session	27-Apr-00
9	Plan Parcial revised by Plenary session	26-Oct-00
10	Urbanisation project set a 24 month implementation period	2000
11	1 st phase of Urbanisation approved (€1,233,998 out of total budget €3,305,567 + 16% IVA)	20-May-02
12	Issues regarding developers not paying their contributions	25-Nov-05
13	Plan Parcial revised by Plenary session	26-Apr-07
14	Town Hall approval for Functional Units (19 Development Zones)	18-Mar-08
15	€1,387,809.57 of infrastructure in place out of total Budget € 3,547,396.87 (2016 figures)	2016
16	By 2016, only 2 of the 19 Zones were deemed complete	2016

If we assume that the 1st phase of urbanisation work should have started in May 2002, then the work should have been finished in May 2004.

Eighteen years after the start of the Urbanisation work, there has been only € 1,387,809.57 of recognised infrastructure provided by the Developers against the budget of € 3,547,396.87 (ie. Only 39.12% complete using 2016 figures).

In contrast, the Homeowners have paid maintenance and service contributions in excess of €4,000,000.00, with another infrastructure expense to follow for two new transformers. (€239,580.00 + interest charges)

CAUTIONARY NOTE TO HOME OWNERS

IF YOU AGREE WITH THIS WAY OF WORKING YOU SHOULD NOT BE SURPRISED IF THE VALUE OF YOUR HOME IS AFFECTED AND THE TIME TO SELL IS EXTENDED.

FOR THOSE CONTEMPLATING SELLING THEIR PROPERTY, PLEASE ENSURE THAT YOU INFORM YOUR BUYER OF ALL THE ENCUMBRANCES ON THE PROPERTY. YOU WOULD NOT WISH TO BE SEEN TO MISLEAD POTENTIAL BUYERS.

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