

Dear Cabrera owners.

Due to the recent court judgment, **Pandora's box has been opened**. The consequences are severe and threatens the very existence of Cabrera as we know it. I attach the legal clarification provided by the Junta lawyer. Also, my interpretation based on 27 years of meetings and negotiating with the local and regional legal Authorities.

If anybody tells you they know how simple it is to adapt and operate Cabrera from now on, is either lying, a naïve fool or taking you for a dupe.

Whatever lawyers, judges, say it is the legal and correct way, and which we are not disputing, however putting it into practice, is a completely different matter from now on, it is going to be trials and tribulations with legal challenges, it will be the norm of every decision's, probably for the next few years, possibly decade. In the meantime, Cabrera as we know it, hangs on a thread.

**Carlos Escobar Navarrete. Lawyer, letter to owners.**

*In relation to the provisional execution of the sentence relapsed in orders of ordinary procedure 10/2015 of the Court of the Contentious Administrative Num. 1 of Vera, I have been asked by the delegates of the Junta of Compensation to explain to them the way to comply with the Judicial Order that has ordered the provisional execution of the sentence.*

*There seems to be some doubt as to how the compensation board's expenses should be shared out, according to the judgment.*

*The judgment, and now the provisional execution order, order that the fees be calculated in accordance with the Statutes protocolized in the Deed of Constitution of the Junta de Compensation Board of August 2, 1991.*

**Specifically, the judgment reads:**

*"I declare the NULLITY of full of the Agreement of January 14, 1993 of the General Assembly of the Junta de Compensation of Cortijo Cabrera as well as that the expenses of maintenance/conservation and expenses of urbanization, of the Junta de Compensation Cortijo Cabrera, must be paid according to the method contained in the Statutes, protocolized in Public Deed of Constitution, granted before the Notary Don José M<sup>a</sup> Calvo, on August 2, 1991, under the number 79 of its protocol, with sentence and costs to the defendant Turre City Council".*

*These Statutes state (Article 32, called "Economic Means"): "The distribution of contributions among the partners will be made in proportion to the right or economic interest of each associate, defined by the participation quotas of which he is the owner, determined according to the bases of action".*

*These bases of action, which were also protocolized in the same deed, develop the distribution of benefits and burdens according to the participation quota, which will be proportional to the surface of the plots contributed. (Base 12º, Participation Fee).*

*Thus, for the provisional execution of the judgment by the Compensation Board, we must refer to the quotas, set in the Statutes, and on which the new members of the Board have been subrogating as they have been selling and segregating plots.*

*I have also been consulted on when the Board should start to be managed under the Statutes regime.*

*As ordered by the Court, it is up to the City Council to require the Board to comply with the sentence. To do this, the City Council will have to specify the way to proceed, and predictably it will be necessary to agree on the best way to do it.*

*More doubts and differences of interpretation are likely to arise. As for this, the owners must know that the execution of sentences foresees that in which cases those questions relating to the form of execution are submitted to the court, in case of discrepancies on how to do it.*

**Regards. Carlos Escobar Navarrete. Lawyer.**

What does this imply in practical and operational terms?

The legal professionals know the theory, nonetheless, to put it into practise, are two worlds apart, as we shall see at continuation.

The statute formulated in 1991 stipulate:

**Expenses of maintenance and conservation:** (means the same) Refers to road surfaces, public areas and gardens is maintained clean and usable.

**Expenses of urbanisation:** This refers to all infrastructure work, construction of roads, water supply and distribution installation, electrical installation, street lighting, treatment plant including pipe work.

These two items of expenses must be met by all the owners according to the percentage of land they own.

**Services consist of:**

Electricity for the pumping water from one deposit to the other, diesel for the generator to pumping water from the well to the water deposit, electricity for street lighting, urbanization insurance for third party claims and the Land Rover, administration, accountant, lawyers, bank, storage facilities for machinery, tools and materials, workmen's telephone, refuge collection, electrical repairs, and maintenance to post room, Land Rover diesel, maintenance, and repairs.

Water in Spain is free at source, however, to deliver it to homes including 110 swimming pools and gardens etc. is part of services of workmen's time for daily controlling, ensuring the deposits are kept to maximum capacity by pumping and transferring water from the well to the three-water deposit, controlling excessive unauthorised usage, daily legal compliance of chemical control, detecting and repairing leaks, emptying, and servicing the two treatment plants, is paid as per consumption in Spain and everywhere else.

The **Junta de Compensacion** has since its formation been acting exclusively as a **Junta de Conservation**. In the assembly agreement 1993, it was unanimously agreed that the property owners will assume the maintenance and services of the urbanisation, and the developer, (Peter Grosscurth) would exempt all properties owners from contributing for the remaining infrastructure cost for all future urbanisation to be built.

The Cortijo Cabrera Plan Partial consist of approximately 991,000 m<sup>2</sup> of land with a 10% building approval, 99,000 m<sup>2</sup> of building, taking on average a large with a smaller property, it calculates on average 100 m<sup>2</sup> per property, that is approximately 990 properties can be built, to date there are only 200, which means a further 790 new properties with the consequential infrastructure required can be built.

In the past we have attempted to form a **Junta de Conservation**, (separating developer from properties owners' responsibility) but it has been a non-starter. We have had several meetings in the Town Hall, with various previous Turre Mayors, as well as technical and legal personnel in Diputación (county council) in Almeria.

The Pandora's box syndrome is: -

A **Junta of Conservation** once's it has been formed has the necessary legal power to represent the community in all legal aspect including bringing debtors to court. However, it is impossible to legally form a Cabrera **Junta de Conservation** entity, until the entire infrastructure of the 991,000m<sup>2</sup> of Cabrera is totally complete and certified. Unfortunately, it is not feasible in the foreseeable future. Cabrera is beautiful and unique and on a mountain.

To form a **Junta de Conservation**, the entire infrastructure must first be completed and certified by the Town Hall. (Remembering according to the statutes that we must now operate to; all property owners are now the developers, responsible to finalise the responsibility of completing the entire infrastructure). Once formed, all property owners will be members and will be legally binding to its decisions adopted at its assembly. (Similar legality as the **Junta de Compensacion**). Will have its own statutes, its own accounts, will celebrate its own annual assembly and elect its representatives. The **Junta de Conservation** is the only legal representation, but as previously said, sadly it cannot yet be created.

However, in a recent meeting held at the Turre Town Hall, it was debated, of the 19 sectors Cabrera has, seven of them are extremely near the infrastructure being 100%

completed, it is possible these seven sectors once completed, with the collaboration of all, including the Town Hall, could initiate its own **Junta de Conservacion**. It is not perfect, but it is a start towards the right direction.

In the past your Delegados have considered, debated, negotiated contacted with an external management company to take over the maintenance and services, but it would still be under the **Junta de Compensacion** legal authority.

The only two possible alternatives we have, to separate services/maintenance.

- 1) contracting an external management company, whose services will not be cheap. Also, the implication of the IVA will also have to be re-examined as a private or contracted company will have to include the 21% Iva on all invoices to owners.
  
- 2) Or forming our own, something like “Cabrera Comunidad de Vecinos & Services S.L.”. It will require registering the service company with a fiscal person as director, legally responsible for the company. It will control the management of only the services, pay invoices, salaries/social security, issue and collect voluntary contribution service invoices, register with the health authorities being responsible for the quality control and health factors of our water supply as well as the two treatment plants discharge quality control, register to employ personnel and be responsible of the Social Security payment.

It will be necessary for owners to sign a legal binding contract between any of the above 2 alternatives requiring these services. enforcement debt recovery will be between property owner and the service company. It will be a nightmare.

Those who do not sign an agreement with any of the companies, may not get services like water, there is no legal way to force them to pay, we will have owners, some will pay because they want Cabrera to continue as best as possible, and others who will quite happily live free of service contribution.

With the maintenance, the **Junta de Compensacion**, has and will continuously have the legal capacity to enforce the recovery of debt for the maintenance and infrastructure cost contribution, and will continue as it has with the existing statutes as an entirely separate entity from the services, submitting invoices only for the maintenance of the urbanisation and the contribution to new infrastructure.

Owners will receive annually two sets of invoices,

- 1) From the Junta de Compensation for maintenance and new infrastructure contribution.
  
- 2) Another from the service company.

Some owners have declared they are exempt of contributing towards the maintenance and services because it so says in their Escritura, (property title deeds). By null and void the 1993 agreement, it also invalidate any consequent agreement, Cabrera must now recalculate as dictate's the 1991 statute, irrespective whatever later agreement may have been made, including the Town Hall will now have to contribute 10% of the maintenance and new infrastructure cost. There are no longer any properties exempt of contributing towards maintenance and infrastructure.

**Where do we go from here**, the judgement is for a provisional execution order, meaning the appeal is still to be celebrated, it could still take a year or so before the final decision on the appeal is considered, with no guarantees of one decision all another.

In the meantime, do we close shop, stop paying electricity, stop collecting the rubbish, stop paying the workmen wages/social security, stop controlling the water supply or repairing water leaks, stop sending invoices, no income no services.

Some owners are saying they are forming an association to take over from the current Delegados, the administration of Cabrera, and control it in their opinion how it should be, declaring the large landowners' debtors, thereby forcing them the pay for practically all the maintenance as well as services, according to their interpretation of the statutes. (Wishful thinking, we all like someone else to pay our bills).

**First**, some of the large landowners have already overpaid their share of maintenance of the urbanisation and will be issuing invoices to the **Junta de Compensacion**, to pass on to all owners, corresponding to their percentage towards the cost of the infrastructure built in the urbanisation since 1993. The debt is on the property not on the owner, thereby owners who have recently acquired a property will be legally liable to repay their previous owners' percentage for the infrastructure liability. These properties will be entitled to a refund amounts they may have overpaid on the **maintenance, but not on the services**.

These proceedings brought upon by the CRA. whom a large percentage of them have now sold or in the process, have created a liability on their sold property to the new current owner who is now responsible, as well as now putting a significant doubt on all other perspective purchasers in Cabrera, will they still purchase with a liability forthcoming on every single property?

An independent certified technical architect and accountant will have to be contracted for recalculations and valuation on services, maintenance as well as infrastructure amounts paid since 1993, and be apportioned as per the statutes.

Who will pay for these fees, is it maintenance, services or is it infrastructure?

Cabrera is an important village with over 200 properties, at this time of the year 95% are occupied, some with families with young children, equally permanent residents are extremely concerned if they are left without water and other services.

To comply with the **provisional Court judgement**, and until we have all the relevant and necessary information, which is extremely complicated, and have the service company contracted or formed, as it will take time, we have no other alternative but to request owners to voluntary contribute to the Junta, a duplicate amount as this January invoice sent, on account for the **Temporary Water, Maintenance and Services combined**. The Village of Cabrera needs to continue and confront the legal uncertainty of this complex situation, whether we continue or not it's up to the individual owners to decide.

Now that we have a temporary indication as to what action we must take, and until the appeal is celebrated and verdict received, which could take some considerable time. **The Annual General Assembly of the Junta de Compensacion** will soon be announced. Please submit your proposals.

Over the years your Delegados have done everything possible to make Cabrera a special place it is today, and as economical as possible, keeping maintenance and services cost as low as possible, with no infrastructure cost passed on to the individual owners, don't take our word for it, do you own research, enquire different similar urbanisations how much they contribute, and the services received.

The above are facts, not the impractical assumption being circulated by person who **conceals himself behind (Why?) an unidentified, unsigned, unauthorised, unofficial web page**, presuming knowledgeable experience of the situation with just a few years as an owner in Cabrera, spending very little time residing here, and never been to the office to seek information or clarification on any query, and circulating thirdhand and self believe information.

This person who by collecting the 3000 euro's indemnity to fund the CRA court case, has directly blocked the appeal against the immediate implementation of the provisional judgement. That one action has resulted in the current time critical situation described above, where we are in immediate danger of losing all services.

The other critical action that is worthy of note is that the provisional judgement was determined mainly due to the fact, that the Town Hall, as the main defendant, failed to turn up to the hearing to explain the seriousness that would result.

Wake up Cabrera, we all have a very serious situation to confront and resolve, for the benefit of all owners who believe in this magical beautiful paradise in the mountain, Cabrera.

Regards

Jose Luis Jerez Requena

Tesorero de la Junta de Compensacion. Cortijo Cabrera.Poly 1