

CLARIFICATION OF CURRENT POSITION IN CABRERA

26 July 2021

Dear Homeowners

We have all received the alarming communication for the Junta Treasurer on 25 July 2021. As we have come to expect, it is a confusing missive which is unfortunately designed to prey on people's insecurities.

The situation is much simpler than the Treasurer portrays.

Essentially, the Junta Board (and the Town Hall) has been told to follow the Cabrera Statutes and to raise fee invoices accordingly. This is not a difficult task but the Junta Board wishes to continue to enable the Developers to avoid paying their fair share of the maintenance fees as they have done over the past 28 years.

The Junta Board strategy is to delay matters and to contrive a new mechanism for avoiding their financial responsibilities – such as creating some sort of new company or organisation to pass the costs onto the Homeowners. Effectively, this would be a re-incarnation of the 1993 agreement which has been deemed to be illegal by the Courts.

Recognising that the Courts have instructed them to follow the Statutes, the Junta Board is now trying to avoid raising invoices to Homeowners because they fully understand that they will need to raise equivalent invoices to the Developers as well. The work to change the basis of billing requires little more than a few changes to a spreadsheet – a few hours work!

Instead of raising the appropriate invoices, the Developers are now seeking 'voluntary contributions' from the Homeowners to ensure that Cabrera continues to function. Effectively, it seems that they are now trying to hold the community to ransom with the threat of disrupted services.

Article 6 of the Statutes states: "The Junta will act under the guidance of the Town Hall which controls and supervises its management". Since the Court Order has been enacted, we have not heard anything from the Town Hall at all. We therefore do not know whether the Town Hall is jointly complicit in the actions that the Junta Board is taking at the moment.

We must point out that the Town Hall is legally responsible for ensuring that the Junta Board operates according to the Statutes.

The situation at the moment is:

1. There is no approved budget for 2021 as the budget was simply rolled over from 2020 without consultation or AGM approval.
2. There is no detail as to what our fees are to be spent on in 2021.
3. The Junta Treasurer is now looking for voluntary contributions to keep Cabrera running instead of issuing legitimate fee invoices.

There can be no better reason for the Town Hall to have to step in and take over the administration of the Junta by putting it on 'special measures'. It seems to us that the Junta Board has fully demonstrated that it is inherently incapable of operating legally and unwilling to operate legally.

There is no reason anyone would be left without services or water if the Junta Board manages the situation effectively. If they feel unable to do so and are unable to formulate a plan to ensure continuity of water supply and services, as a change in basis of billing is implemented, they should stand down.

Open Cabrera can see no benefit in making any voluntary contributions to the Junta Board in order to assist them in their efforts to avoid being compliant with the law. The Junta Board simply needs to raise the correct invoices in accordance with the law.

The Junta Treasurer is intent on carving out a distinction between Maintenance and Services and foisting all the costs onto the Homeowners.

So let us examine what the Law says – see **Appendix A**:

Appendix A (an extract from LOUA 113) **categorically confirms** that the costs of all maintenance and services are shared by **ALL** owners until final handover to the Town Hall.

So, let us examine the contents of our own AGM minutes – see **Appendix B**.

Appendix B confirms that:

- a) The provision of services and the execution of maintenance work is the sole responsibility of the "Junta de Delegados".
- b) All owners of land before and up to the date of registration of the 'Junta de Compensación' on September 30th 1992, including the promoting companies, are members of the Junta, participating in proportion to the percentage of land they own.
- c) The Lawyer, Mr Moya, confirmed that service and maintenance costs should only be charged according to the quota of participation in the Junta.

The Junta Treasurer states the following:

"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 voluntarily contribute to the Junta, a duplicate amount as this January invoice sent, on account for the **Temporary Water, Maintenance and Services combined**."

Quite simply, this is not going to happen. There is no prospect of replacing one illegal way of operating with another illegal way of operating.

The Treasurer has stated in writing his intention to not follow the Court Order and to continue to operate the Junta illegally.

We (as Homeowners) will never entertain the establishment of any service company whose sole purpose is to enable the Developers to evade their financial responsibilities under the Law and the Statutes.

Open Cabrera strongly advises against anyone making voluntary financial contributions to the Junta Board in the absence of any legally and appropriately calculated invoices from the Junta Board. Until the status of the Developers changes from that of 'non-payer' to 'payer' it would be unwise for Homeowners to make any one-sided contributions.

Open Cabrera strongly advises the Junta Board and the Town Hall to immediately calculate the invoices to all the landowners in strict accordance with the law and the Statutes. This is not a difficult task and it would enable the ongoing seamless operation of Cabrera.

It is, of course, within the gift of the current Junta Board to deliberately flout the law and to disrupt the continuity of the effective running of Cabrera. If they do so, the Town Hall and the Junta Board should give some thought to the need for them to protect the income of the Junta Workers who are mere bystanders of the illegality that is taking place.

Of course, the straightforward immediate compliance with the law would ensure that we do not experience any disruption in Cabrera.

The Town Hall is also responsible for the control and oversight of the Junta Board so we are also going to look to them to ensure that the law is followed and that that the transition to legal operation by the Junta Board is managed quickly and seamlessly in Cabrera.

Our advice to all the Homeowners is to “sit tight and don’t blink”!

The Law is firmly on our side.

All the Best

OPEN CABRERA

www.opencabrera.com

APPENDIX A

The LOUA Article 113

Artículo 113. Gastos de urbanización.

1. La inclusión en el proceso urbanizador y edificatorio a desarrollar en una unidad de ejecución impone legalmente a la propiedad del suelo, con carácter real, la carga del levantamiento de la parte proporcional de todos los costes de urbanización correspondientes a los siguientes conceptos:

- a) Obras de vialidad, en las que se comprenden las de explanación, afirmado y pavimentación de calzadas; construcción y encintado de aceras, y construcción de las canalizaciones para servicios en el subsuelo de las vías o de las aceras.
- b) Obras de saneamiento, que incluyen las de construcción de colectores generales y parciales, acometidas, sumideros y atarjeas para aguas pluviales y estaciones depuradoras, en la proporción que corresponda a la unidad de ejecución.
- c) Obras para la instalación y el funcionamiento de los servicios públicos de suministro de agua, incluyendo las de captación de ésta cuando sean necesarias y las de distribución domiciliaria de agua potable, de riego y de hidrantes contra incendios; de suministro de energía eléctrica, comprendiendo la conducción y la distribución, así como el alumbrado público, y los de telefonía y telecomunicaciones.
- d) Obras de ajardinamiento y arbolado, así como de amueblamiento urbano, de parques y jardines y vías públicas.
- e) Redacción técnica y anuncios preceptivos en la tramitación administrativa del planeamiento de desarrollo preciso para la ordenación pormenorizada y del proyecto de urbanización.
- f) Gestión del sistema de actuación.
- g) Indemnizaciones que procedan en favor de propietarios o titulares de derechos, incluidos los de arrendamiento, referidos a edificios y construcciones que deban ser demolidos con motivo de la ejecución del instrumento de planeamiento, así como de plantaciones, obras e instalaciones que deban desaparecer por resultar incompatibles con éste.
- h) Realojamiento y retorno legalmente preceptivos de residentes habituales.
- i) Cuando así se prevea expresamente en el instrumento de planeamiento a ejecutar o en el sistema de actuación aplicado al efecto, además, las obras de infraestructura y servicios exteriores a la unidad de ejecución que sean precisas tanto para la conexión adecuada de las redes de la unidad a las generales municipales o supramunicipales, como para el mantenimiento de la funcionalidad de éstas; todo ello cuando así proceda conforme al régimen de las distintas clases del suelo.
- j) Las de urbanización de los sistemas generales y cualesquiera otras cargas suplementarias que se impongan a los terrenos, cuando así se haya establecido en el Plan General de Ordenación Urbanística.
- k) Cualesquiera otros expresamente asumidos mediante convenio urbanístico o establecidos en la correspondiente concesión administrativa.

2. **Corresponde igualmente a la propiedad del suelo, en caso de aplicación del sistema de actuación por compensación, los gastos relativos al mantenimiento de todas las obras y los servicios previstos en el apartado anterior hasta la recepción de la urbanización por el municipio**

LOUA Article 113

Article 113. Urbanization expenses.

1. The inclusion in the urbanization and building process to be developed in an execution unit legally imposes on the property of the land, with real character, the burden of lifting the proportional part of all the urbanization costs corresponding to the following concepts:

- a) Road works, which include earthworks, affirmation and paving of roads; construction and curbing of sidewalks, and construction of pipelines for services in the subsoil of the roads or sidewalks.
- b) Sanitation works, which include construction of general and partial collectors, connections, drains and gutters for rainwater and treatment plants, in the proportion that corresponds to the execution unit.
- c) Works for the installation and operation of public water supply services, including those for the collection of water when necessary and those for the home distribution of drinking water, irrigation and fire hydrants; of electrical energy supply, including conduction and distribution, as well as public lighting, and telephony and telecommunications.
- d) Landscaping and trees, as well as urban furnishing, parks and gardens and public roads.
- e) Technical drafting and mandatory announcements in the administrative processing of the precise development planning for the detailed planning and the urbanization project.
- f) Management of the action system.
- g) Compensations that proceed in favor of owners or holders of rights, including those of lease, referring to buildings and constructions that must be demolished due to the execution of the planning instrument, as well as plantations, works and facilities that must disappear due to be incompatible with it.
- h) Legally mandatory rehousing and return of habitual residents.
- i) When this is expressly provided for in the planning instrument to be executed or in the action system applied for that purpose, in addition, the infrastructure works and services outside the execution unit that are necessary both for the adequate connection of the networks of the unit to the municipal or supra-municipal generals, as for the maintenance of the functionality of these; all this when it proceeds according to the regime of the different soil classes.
- j) Those for the urbanization of the general systems and any other supplementary charges imposed on the land, when this has been established in the General Urban Planning Plan.
- k) Any other expressly assumed by urban agreement or established in the corresponding administrative concession.

2. It also corresponds to the ownership of the land, in case of application of the compensation action system, expenses related to the maintenance of **all works and services** provided in the previous section until the reception of the urbanization by the municipality

APPENDIX B – AGM Minutes

The minutes of the 1993 Junta AGM clearly and categorically states that services and maintenance are the responsibility of the Junta Delegados. See page 5.

EXTRACTS:

In the first place the approval of the surfaces and coefficients was ratified. The obligations of the owners in respect of costs of services and maintenance was amply discussed.

The main points which came out of this discussion follow:

4.1 The vote each of the owners has in the Junta is related to the percentage land he owns.

4.2- **The provision of services and the execution of maintenance work is the sole responsibility of the "Junta de Delegados".**

It was again explained to the meeting that under Spanish law all owners of land before and up to the date of registration of the 'Junta de Compensacion' on September 30th 1992, **including the promoting companies**, are members of the Junta, participating in proportion to the percentage of land they own.

In the following discussion, Mr. Moya (Note; Mr Moya was a Lawyer representing some Homeowners) continued advising his clients to maintain the position that **service and maintenance cost should only be charged according to the quota of participation in the Junta**, which would mean only -4.475 % of the total maintenance cost to be borne by all the owners of houses together.

=====

Contrary to the Treasurer's recent written assertion on 25 July 2021, the Statutes did not ever "stipulate a separation of services and maintenance".

This is the Treasurer's own invention.