

JUNTA DE COMPENSACION STATUS REPORT

8 March 2022

This document is intended to take stock of the current situation in Cabrera Poligono 1. We start with a build up of the history:

THE PERIOD PRIOR TO THE FORMATION OF THE JUNTA DE COMPENSACION IN 1991

It seems that the houses that were constructed in Cabrera prior to the formation of the Junta de Compensacion in 1991 were illegal properties.

Clearly, the purchasers of the homes prior to 1991 rightly believed that they had already made their contributions to the infrastructure (roads, water deposit, transformer etc) and were therefore exempted from future urbanisation costs when they joined the Junta.

THE PERIOD AFTER THE FORMATION OF THE JUNTA DE COMPENSACION IN 1991

Similarly, purchasers of homes after 1991 made their required contribution to the infrastructure costs as part of the purchase price of their homes.

THE CREATION OF THE 1993 AGREEMENT

In 1993, the Developers ran into financial difficulty and were looking for ways to avoid costs. This resulted in what was called the “1993 Agreement” which is vaguely outlined in an extract from the 1993 AGM minutes – see Appendix A.

One of the approaches that the Developers put forward was to tell the Homeowners that they needed to pay the Developers’ share of all the services and maintenance costs. If they did not, they were told that the Cabrera project would not be able to continue:

- One would not be able to continue the Cabrera project.

The 1993 AGM minutes rightly record the following:

It was concluded unanimously that the cost of development of Cabrera should remain the responsibility of the developer/promotor, and that

It was the responsibility of the developer/promoters to pay for the Urbanisation costs in 1991 and 1993 and it **remains** their responsibility today. We believe that this situation has been misrepresented in the same way today when the Junta Treasurer states that the 1993 arrangement was entered into because the “Homeowners did not want to pay the Urbanisation costs”. This was not the reason. The 1993 Agreement was created because the Developers ran into financial difficulty and they “sold the Homeowners a pup”. The Court has determined that the agreement is ‘null and void’.

The Promoter-Developers were always responsible and continue to be responsible for the urbanisation costs. Their investment (together with the fixed payments from Homeowners towards urbanisation costs in the purchase prices of the houses) enables them to turn rural land into urbanised plots which they can sell for a very significant profit. The Developers have never given

Homeowners 'free' urban infrastructure in exchange for not having to pay their Services and Maintenance dues for 30 years.

The existing homeowners have made their full and proper contribution to the infrastructure costs in the purchase price of their homes, unless it states to the contrary in their property Deeds.

ARGUMENTS BETWEEN PROMOTER-DEVELOPERS IN 1998

In 1998, Developer Jose Jerez told his fellow Promoter-Developers that we ***“have to look forward for the financing of the outstanding infrastructure, distributed equally and based on the outstanding square meters of building in the Plan Parcial. That means to say that each developer contributes equally towards the infrastructure outstanding, according to how many meters of construction he has available. That is what the law says it should be done.”***

(By 'equally' he means 'fairly' and by 'meters' he means 'square meters' of undeveloped urban plots.)

Now, we all know that an Urbanisation Plan was produced in around 2000 on this basis. In 1998, they were arguing over who actually owned the existing infrastructure prior to the formulation of the 2000 Urbanisation plan. This existing infrastructure (roads, electricity, water) was effectively paid for by the purchasers of the homes and the Developer-Promoters prior to the formation of the Junta de Compensacion in 1991.

DEVELOPMENT OF THE URBANISATION PLAN IN 2000

By the time the Urbanisation Plan was established in around 2000, there were a number of homes that were exempt from urbanisation costs because they had paid their fair share already.

This same misrepresentation of the situation is now being used by the Treasurer to infer that the Homeowners owe him for all the infrastructure that he has paid for in the past as he has provided it 'for free' under a special 1993 Agreement. This is a confidence trick.

So, the Treasurer and fellow Developers have:

1. Avoided services and maintenance charges of in excess of €3 million over a period of 30 years using the 1993 scam
2. Been paid the required contributions towards infrastructure in the urbanisation plan by each and every homeowner - included in the purchase price
3. Failed to complete the infrastructure they committed to build in the 2000 Urbanisation plan

And, now their latest ruse is to attempt to be “compensated” by the Homeowners for all the investment that they **allegedly** put into the Cabrera infrastructure.

In reality, these Developers owe us the entire missing infrastructure in the 2000 Urbanisation plan. We, homeowners, have paid our dues in full and owe them nothing.

The delinquent Developers need to fulfil their obligations by completing the planned infrastructure that they promised at their own expense.

The Developers (not the Homeowners) provided a Bank guarantee in favour of the Town Hall that they would complete the infrastructure. It is now over two decades later and they have still not honoured their commitments in terms of the Urbanisation plan which was agreed with the Town Hall and the Cabrera Homeowners.

SO WHERE ARE WE NOW?

The Junta Treasurer's MANTRA now is that the Homeowners have shot themselves in the foot and that "You are all Developers now" and "you all owe me". So, he intends to try to extort more money from the Homeowners to re-invent himself as a Developer and profit from the sale of urbanised plots and houses. He sees the Homeowners as "captive investors" in his businesses with no prospect of any return on their investment.

The Developers are using their overwhelming majority vote to railroad through all manner of resolutions in their own favour at the AGMs. They are trying to take advantage of the minority Homeowners.

The Court has instructed the Town Hall and the Junta de Compensacion to follow the Cabrera Statutes and to obey the Law. The Treasurer has dragged his feet and this has resulted in requests for **DONATIONS** to run Cabrera in July 2021 and no fee invoices or requests for Donations in January 2022.

The Treasurer intends to appoint his own Accountants and Architects to carry out an assessment of the historical debtors and creditors. We certainly need an assessment but this will need

Independent Assessors (not 'stooges') to calculate the following:

1. The full extent of the avoided Services & Maintenance payments that have to be re-paid to the Homeowners. (circa €3m plus)
2. The full extent of the missing infrastructure for Phase 1 of the urbanisation plan. The Treasurer and his fellow Developers owe us this infrastructure because they undertook to complete it in 4 years and took money from the Homeowners to do this work.

A Timeline of Events is provided in Appendix C.

Where is the infrastructure that the Developers promised the Homeowners when they sold them the houses? This is the question that needs to be asked of the Developers.

Without this infrastructure being fully complete, there can be no future Phase to the Urbanisation as it could not possibly be authorised by the Town Hall in our view. It is estimated by the Town Hall architect that around 65% of the planned infrastructure is missing. The Homeowners have paid for their portion of Phase 1 but we need the Developers to also pay their portion by completing the works that they promised.

The Treasurer is very fond of saying "We are all Developers now". In reality, the Statutes generally refer to "Owners" without distinguishing specifically between Homeowners and Developers.

However, if we consider the Treasurer’s “We are all Developers now” approach, then the Treasurer’s own understanding is as follows:

“That means to say that each developer contributes equally towards the infrastructure outstanding, according to how many meters of construction he has available. That is what the law says it should be done.”

Therefore, every Homeowner that has square metres of construction available will have to contribute towards future urbanisation costs (ie. if you own an undeveloped plot and it is earmarked for urbanisation under an approved urbanisation plan). This means that most existing Homeowners will not be contributing a euro towards future urbanisation work as they do not have any ‘meters of construction’ available as their properties are already developed.

WHAT IS THE WAY FORWARD

We need to see a separate **Services & Maintenance Budget** and a separate **Urbanisation budget**.

The Services and Maintenance budget must not be apportioned between ‘Homeowners’ and ‘Developers’ by the Treasurer in order that he can avoid paying his dues. The Services and Maintenance budget must not include any infrastructure costs.

The Urbanisation Budget must be separately managed by the Junta as all the funds to complete the missing infrastructure need to be provided by the Developers.

Please see **Appendix B** for the Open Cabrera version of the 2022 Services and Maintenance budget.

The Treasurer likes to state that “We are all Developers now” so why would he now create this distinction between “Homeowners” and “Developers” when preparing the budget. In reality, Statutes state that we are all **“Owners”** and we share **ALL** the services and maintenance costs according to our proportion of land ownership.

The separate Urbanisation Budget needs to be produced by the Promoter-Developers and the first budget is expected to show how the failed Developers will fulfil their obligations in terms of completing the work in the Phase 1 Urbanisation plan –something that should have been done by 2003. It will also detail the funding arrangements which will not come from the existing Homeowners in the Development zone as they have already paid their dues in the purchase price of their houses.

The current 2022 Services & Maintenance Budget seems to include for transformer infrastructure **“Installation”**. This extract has been slipped in at the bottom:

Forecast amount for technicians and adviser’s.	<u>12.000</u>
Provision for the instalation of the 2 Transformers	<u>250.000</u>

Yes, a quarter of a million euro of Homeowners’ money in one single line. There is no further detail at all and this underlines the utter disrespect that the President and Treasurer have for the Homeowners. This was not even discussed at the 2021 AGM.

Furthermore, the technicians and advisers will be appointed by the President and Treasurer to calculate how much the President and Treasurer are allegedly “owed” by the Homeowners. The suggestion from the Treasurer is that he and the President are owed so much by the Homeowners that they will not have to pay anything towards the €262,000 mentioned above.

Special note on Cabrera Water

We point out, yet again, that it is illegal for the Junta de Compensacion to sell services in exchange for money. Nevertheless, the Developers have proposed to sell services to the Homeowners and approved it with their overwhelming majority vote at the 2021 AGM.

The following cost items totalling €36,200 have been associated with water and sewage

6020000001	Product. Water Sanitation Control	400.00 €
6070000001	Water and sewage pump replacement and repairs	6,000.00 €
6220000002	Machine Repairs	8,600.00 €
6280000002	Electricity supply for the 2 treatment plant	17,500.00 €
6280000004	Diesel for the Generator.	1,500.00 €
6290000009	Monthly and yearly water analysis. (ACCA)	1,100.00 €
6290000010	Emptying and cleaning 2 treatment plants.	1,100.00 €
		<hr/>
		36,200.00 €

The Developer landowners intend to pay nothing towards these (and other) costs. Instead, they propose to make the homeowners maintain and repair the water infrastructure while they will just make use of it at no cost while they build and sell houses.

Having failed to provide the full infrastructure that they promised, developers wish to simply have it available ‘on tap’ to connect houses and make use of it. It seems that the homeowners will be expected to fund the infrastructure for the Developers to enjoy and use at their leisure.

This water and sewage infrastructure should have been fully in place by 2003 (together with all other infrastructure) when it could have been handed over to a water utility company without any problems. The Developer Landowners need to share the cost of their own failure to invest rather than placing the burden of their failure solely on the Homeowners.

The Developers need to complete the urbanisation in accordance with the Urbanisation plan. Until such time as the urbanisation can be handed over to the Town Hall, all these costs must be shared in accordance with the Statutes. This is the Law.

WHAT ABOUT FUTURE PHASES OF DEVELOPMENT AFTER PHASE 1 IS COMPLETE?

The development model remains the same.

Any future Phase of urbanisation will provide infrastructure for those plots that do not have infrastructure and are not part of the Phase 1 scope of work.

1. The Urbanisation Plan will need to be drawn up for Phase 2 and this will have to be paid for by the Promoter-Developers.

2. The Phase 2 plan will need to be approved by the Town Hall
3. The funds for the Development will need to be paid into the Junta de Compensacion by the Promoter-Developers.
4. The Promoter-Developers will have to raise their own funds to pay for the Development. This is quite normal practice everywhere except in Cabrera, it seems.
5. The Promoter-Developers will obtain fixed concrete quota payments towards the infrastructure costs from the sale of each urbanised plot or home within the boundaries of the new phase of development. This, alone, would cover the cost of the Development. In addition, the Promoter-Developers will gain significant profits from the sale of urbanised plots or homes.
6. The existing Homeowners in Cabrera Phase 1 should not be expected to provide any contribution to the Phase 2 development or any further Phases.

The idea that existing homeowners should pay Promoter-Developers again and again for infrastructure without the promised infrastructure being provided or any return on investment is obviously questionable and deeply flawed.

OPEN CABRERA

www.opencabrera.com

APPENDIX A

THE ONLY AVAILABLE INDICATION OF THE "NULL AND VOID" 1993 "AGREEMENT":

Translation:

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".
- 4.3- In view of the fact that the owners of houses in Cabrera are the only beneficiaries of the services supplied and the maintenance work done, it is not correct nor justified that they would participate in those costs only in relation to the percentage land they own.
- 4.4- Because of this, and considering also that there are private contracts between each owner and the promoting company, it is considered correct that the owners pay the costs incurred to enable them to live in Cabrera.

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 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. Nor the secretary of the municipality, nor its lawyer, nor the architect Mr. Luis Pastor agreed to this position for the following reasons:

- One would not be able to continue the Cabrera project.
- Furthermore, this would mean that the owners of houses would have by law to participate in the development cost, meaning e.g. to cede 30 to 35% of their land for roads, green zones etc., participate in the urbanisation cost and in all future projects, without being excused from still paying for the services which they would have to use and the maintenance.

Mr. de Groot stated that in compliance with his contract he contributed towards the infra-structure when he bought his plot, and that the promotor had complied with his obligations in that respect. That he, for his part, had the obligation to pay for the services and maintenance, and if all of the owners complied with their contractual obligations there would be no problems in Cabrera.

20 of the 32 owners present agreed fully with his statement.

Mr. Pollitt added that he had no desire to remain, apart from a private owner with its corresponding obligations, also a developer with a considerable number of added financial responsibilities, since this would result in personal bankruptcy and the signing of a blank

cheque.

It was concluded unanimously that the cost of development of Cabrera should remain the responsibility of the developer/promotor, and that the cost of services and maintenance must be borne by the owners of private houses, with the following observations:

- The promotor will take over the legal obligations of the other owners to participate in the development cost, provided they have fulfilled their contractual obligations particularly in respect of maintenance and service cost.
- Furthermore, the promotor will subvencion for a not inconsiderable part in the maintenance and service cost for the year 1993.

Summarizing, it was decided unanimously that the owners of houses in Cabrera would be considered as owners "buyers" in respect of costs of conservation and maintenance of the urbanisation, those costs being distributed as stated in the budget which was next discussed.

APPENDIX B – Comments on 2022 Junta Budget

Code	Description	2022 Budget	Comment
6000000001	Plumbing Materials & Tools	7,100.00 €	Homeowners buy their own materials and tools. Anything else is shared by ALL the Owners according to the Statutes. Cost needs investigating – we probably have more small tools now than Lopez Fernandez.
6000000002	Building Suppliers	2,100.00 €	Homeowners use their own building suppliers. Anything else is shared by ALL the Owners according to the Statutes.
6000000003	Asphalt	8,400.00 €	Homeowners pave their own driveways. Anything else is shared by ALL the Owners according to the Statutes.
6000000004	Gardening products	700.00 €	Homeowners look after their own gardens. Anything else is shared by ALL the Owners according to the Statutes.
6000000005	Ironmonger and Small Tools	2,000.00 €	Homeowners have their own tool kits. Anything else is shared by ALL the Owners according to the Statutes.
6020000001	Product. Water Sanitation Control	400.00 €	* Water - To be shared by ALL the Owners according to the Statutes
6070000001	Water and sewage pump replacement and repairs	6,000.00 €	* Water - To be shared by ALL the Owners according to the Statutes. Cost needs investigating. Last year we spent €5,843.36 on this. It's a lot.
6070000002	Sewage pipes Unblocking Services	1,500.00 €	Homeowners maintain their own plumbing. Anything else is shared by ALL the Owners according to the Statutes.
6070000003	Various small contractors	5,100.00 €	Homeowners pay for their own contractors. Anything else is shared by ALL the Owners according to the Statutes.
6070000005	Leak detection services	1,500.00 €	Homeowners look after their own plumbing. Anything else is shared by ALL the Owners according to the Statutes.
6210000001	Sand and gravel	700.00 €	Homeowners buy their own sand and gravel for maintenance. Anything else is shared by ALL the Owners according to the Statutes.
6210000002	Machinery JCB hire water Leaks etc.	12,000.00 €	Homeowners deal with and pay for their own water leaks. Anything else is shared by ALL the Owners according to the Statutes. Cost needs investigating.
6220000002	Machine Repairs	8,600.00 €	* Water - To be shared by ALL the Owners
6220000008	Repairs, mainten.Vehicles Transport	9,000.00 €	Vehicles are required under the maintenance model way of working. This needs to be shared by ALL the Owners according to the Statutes. Cost needs investigating. Last year we spent €6,430.53 on this. It's a lot.
6230000001	Gestoria laboral Social Securities	600.00 €	To be shared by all Owners according to the Statutes.
6230000002	Legal fees Consultation and for reclaiming outstanding maintenance charges.	10,000.00 €	Appalling abuse of Homeowner funds when we know that the money is being appropriated for legal fees to obstruct the implementation of the Court Order won by the Homeowners.
6230000006	Professional Services, Accountants	1,000.00 €	To be shared by ALL the Owners according to the Statutes.
6250000001	Insurance for Civil responsibility & Land Rover	2,200.00 €	To be shared by ALL the Owners according to the Statutes.

6260000001	Bank Charges	400.00 €	To be shared by ALL the Owners according to the Statutes.
6280000001	Diesel for the Land Rover.	5,500.00 €	Vehicles are required under the current maintenance way of working. This needs to be shared by ALL the Owners according to the Statutes.
6280000002	Electricity supply for the 2 treatment plant	17,500.00 €	* Water - To be shared by ALL the Owners according to the Statutes. Cost needs investigating. Who has been paying for the electricity of the 12 homes that are on Builders Supply? The 12 home owners have not been paying since August 2019.
6280000004	Diesel for the Generator.	1,500.00 €	* Water - To be shared by ALL the Owners according to the Statutes
6290000003	Administration contribution.	15,600.00 €	To be shared by ALL the Owners according to the Statutes. A 30% increase over last year which has been awarded by the Treasure to himself. Disgraceful.
6290000005	General office consumables expenses etc	2,000.00 €	To be shared by ALL the Owners according to the Statutes. Cost needs investigating.
6290000006	Workmen Mobile telephone.	350.00 €	To be shared by ALL the Owners according to the Statutes.
6290000007	Miscellaneous expenses, Flags, Signs, light bulbs	1,200.00 €	To be shared by ALL the Owners according to the Statutes.
6290000009	Monthly and yearly water analysis. (ACCA)	1,100.00 €	* Water - To be shared by ALL the Owners according to the Statutes
6290000010	Emptying and cleaning 2 treatment plants.	1,100.00 €	* Water - To be shared by ALL the Owners according to the Statutes
6310000001	IVA non recoverable	22,500.00 €	Breakdown of how this is derived is not provided. Suspect that this should be in the Development Budget (Developers Budget) not the Maintenance budget.
6310000002	Other Taxes (discharged rate)	500.00 €	To be shared by ALL the Owners according to the Statutes.
6400000003	Diego wages	27,500.00 €	To be shared by ALL the Owners according to the Statutes. A 10% increase over last year by a Treasurer who was already over-paying the labourers for some reason???
6400000005	Damian wages	27,500.00 €	To be shared by ALL the Owners according to the Statutes. A 10% increase over last year by a Treasurer who was already over-paying the labourers for some reason???
6420000001	Two workmen Social Security	18,600.00 €	To be shared by ALL the Owners according to the Statutes. A 10% increase over last year by a Treasurer who was already over-paying the labourers for some reason???
6630000004	Interest on guarantees	1,600.00 €	Should be solely a Developer Cost
		223,350.00 €	(depreciation excluded)

APPENDIX C – CABRERA TIMELINE

2000	Urbanisation project set a 24 month implementation period
20-May-02	1 st phase of Urbanisation approved (€1,233,998 out of total budget €3,305,567 + 16% IVA)
25-Nov-05	Issues regarding developers not paying their contributions
26-Apr-07	Plan Parcial revised by Plenary session
18-Mar-08	Town Hall approval for Functional Units (19 Development Zones)
2016	Town Hall assesses that €1,387,809.57 of infrastructure is in place out of total Budget of €3,547,396.87. Only 2 of the 19 Zones were 100% complete.
2017	Cabrera Residents Association takes Town Hall to Court
13-Dec-19	1st Almeria Court Judgement awarded against the Town Hall
18-Feb-20	Junta de Compensacion appeals against the Court Judgement on a matter of process
23-Nov-20	2nd Court Judgement against Town Hall confirmed. Junta de Compensacion avoids holding a 2020 AGM at all.
17-Dec-20	Junta Treasurer decides to appeal against the 2nd Court Judgement.
06-Jul-21	Residents gain immediate enactment of the Court Judgement by paying €3000 bond to the Court
24-Jul-21	Junta de Compensacion requests DONATIONS from homeowners to keep Cabrera running and to avoid raising legal fee invoices according to the Court Judgment
26-Nov-21	AGM held in Turre. Developers use their overwhelming majority vote to pass proposals to amend the Cabrera Statutes, to pass a budget which is not in accordance with the Cabrera Statutes, to charge for Services which is not in accordance with the Cabrera Statutes and to charge fees in a way that is not in accordance with the Cabrera Statutes.
01-Dec-21	Multiple appeals against the legality of the 2021 AGM submitted to the Town Hall.
18-Dec-21	Junta de Compensacion publishes minutes of the 2021 AGM. Homeowners shocked to discover that Junta de Compensacion has amended Town Hall's voting rights from 29.7% to 10% enabling Developers to achieve over 60% vote between a handful of them. This change to the voting rights was not even discussed at the AGM. Developers believe that a 60% vote entitles them to change the Statutes. They are incorrect as "more than half the Junta Members who between them hold more than 60% of the votes" would be needed to change aspects of the Statutes - note that this majority may not vote on a matter of Law.
11-Feb-22	Open Cabrera meets with the Junta Treasurer to hear how he has 'lost respect for the owners in Cabrera' and 'how much everyone owes him'. He stated that the 'fees would double' now that the residents had challenged the Junta. He also stated that he would be deducting his share of future chargeable costs from what he believes to be owed to him.
January \ February 2022	The Town Hall remains silent on the Appeal against the legality of the 2021 AGM. The Junta de Compensacion does not raise fee invoices as expected and does not ask for any donations to keep Cabrera running illegally. The February 2022 EGM is not called as mentioned at the November 2021 AGM. Suitable financial assessors do not seem to be appointed as yet.