

JUNTA DE COMPENSACION STATUS REPORT

18 July 2022

Fellow Homeowners

STATUS UPDATE

- The promised EGM in February 2022 has not emerged.
- Fee invoices have now not been raised for July 2021 or January 2022 or July 2022. Instead, Cabrera is being run on the basis of requests for voluntary donations.
- The Junta Board has not revealed whether the recent construction of the wall along the bowling green or the drainage to the offices and the arch bar has been privately funded or whether it is intended that homeowner funds will be used.
- Extract from 1996 AGM minutes: "A question was raised on the situation of the tower and the walls of the " Bowling Centre", including the position of the Junta in this respect. Mr. Jerez replied that the Junta cannot take initiatives to repair the walls and the tower, because this would involve a change in the Statutes, **for which a 100% vote in favour** would be necessary. The Mayor of Turre informed the meeting that the Municipality had already contacted the owner, demanding that the required repairs will be effected."
- The Junta Board has not revealed whether any extraordinary expenses have been authorised this year using Homeowner funds (the Homeowners being the only financial contributors to Cabrera).
- The Junta Board has not given any information to Homeowners regarding progress on the historical financial assessment which is allegedly taking place or who is conducting this assessment which is being funded by Homeowner money.
- The Junta Board has not given any information to Homeowners regarding progress on the analysis of what it will take to complete the infrastructure or the Architect that is supposedly being paid to do this with Homeowner money.

PROVISIONAL TRANSFERS

Recently, Homeowners all received a 'Provisional Transfer' notice which caused homeowners a great deal of confusion. It was not clear whether this was an 'invoice', or whether this was a 'receipt'. It was not clear whether you had to actively reply to the email or whether you had to press a particular 'button' to reply.

The conclusion that we have drawn is that this was a request for a donation disguised as a pseudo-invoice in the hope that homeowners will be alarmed into paying it.

We believed that money would only be taken if you authorise it by email reply. However, it may be that there was a 'button' response on your email. If you clicked on this, it seems that you have authorised the Junta Board to activate direct debits on any 'Provisional Transfer' notification that the Junta Board may issue now and in the future.

As co-landowners with the Developers, we are confident that most Homeowners would be very willing to pay fee invoices if they were correctly calculated according to the Statutes.

However, it seems that the Developers are not willing to invoice themselves and this is why pseudo-invoices are being issued. If the Developers issued incorrect formal invoices without invoicing themselves, they would be in breach of the Court Order and it would be an act of fraud.

There is no reason why legitimate invoices could not have been raised for the past 3 payments. Cabrera does not need to survive off voluntary donations.

JUNTA PROPOSE A SEPARATE SERVICES COMPANY

Instead of raising legitimate fee invoices the Junta Board has now decreed that a separate services and maintenance company must be created.

The Junta Board has stated that this company (“totally independent of the Junta”) is required in order to comply with the Court Order. [Junta email of 7 July 2022].

This is, of course, nonsense.

The Junta Board has stated that this company must be formed in order to be able to hold the promised EGM.

This is, of course, nonsense as well.

Nevertheless, a group of concerned homeowners have put themselves forward to enter into discussions with the Junta Board about the feasibility of this proposed arrangement. We wish these homeowners well but need to raise some fundamental concerns.

FUNDAMENTAL CONCERNS

1. Why can't this new arrangement simply be created under the existing Statutes? If the Developers really wanted to give Homeowners more control of the Services & Maintenance budget there is no reason why this cannot be done under the existing Statutes. A separate company is not required and the fees simply need to be charged according to the Statutes.
2. Would the Developers be paying into this new company according to the Statutes? ie. In proportion to their land ownership like everyone else. If it is a completely separate company, what obligations do any Junta members have towards this new company?
3. As additional infrastructure is added by the Developers, will this additional infrastructure be maintained by the new separate company. ie. By the homeowner run company - sort of a “free warranty” on the existing and any new infrastructure provided by the Developers.
4. Who would be responsible for making new connections to the existing infrastructure?
5. Who would be responsible for connecting those without water and Endesa electricity connection?
6. How will you ensure that the existing infrastructure is brought up to an acceptable standard and level of completion to enable it to be taken over by any new organisation?

CONCLUSIONS

1. We should be careful about entering into any new working arrangement that legitimises and gives credence to the Developers' alternative view of the way Cabrera should operate.
2. We should not create something that impedes the court action that is already in progress. Instead, we should concentrate on driving the court action through as cleanly as possible.
3. The Developers could have raised correct invoices immediately after the Court Order was enacted. They are repeatedly asking for donations because they do not wish to invoice themselves. This is because they wish to buy time to find a way to avoid their obligations under the Statutes.
4. We are concerned that the Developers will not pay anything into any new Services and Maintenance organisation that needs to be run by the Homeowners. In essence, they are proposing to re-implement the 1993 Agreement formally in a new company with the added advantage that it will have to be paid for **AND** managed by homeowners. The Developers will then simply demand the maintenance of their infrastructure and the water services from the Homeowners as it will be positioned as a Homeowner responsibility. In effect, it may amount to a free warranty for the Developers on everything they have built to date and on anything they might build in future.
5. The notion that "at least Homeowners will be in charge of our services and maintenance budget" is flawed. The price for gaining control over the Services and Maintenance expenditure by entering into this replica of the 1993 Agreement is far too high.
6. The Developers have been scaremongering by saying "After the enactment of the Court Order, you are all Developers now". This is a complete fabrication.

The Statutes make no mention of the word "Developers". The Statutes do, however, make reference to Promoters ("Original Landowners") and Urbanisation Firms. Every member of the Junta is an "Owner" and each owner is required to make their fixed and concrete contributions to the infrastructure cost.

We contend that the existing Homeowners have already made their full infrastructure contribution in their purchases unless it states otherwise in their Deeds.

Even if the Homeowners were to entertain the ridiculous idea of paying for their infrastructure for a second time, they would only be obliged to pay around 25% of the urbanisation costs which is estimated at 25% of €5,000,000. The Promoting Companies (Developers or their successors which inherit their obligations) would be obliged to fund 75% of €5,000,000.

We have no confidence that the current Promoting Companies \ Developers have the standing to be able to raise the capital. We see no possibility that they will be able to raise the funds given their failure to deliver the urbanisation works since 1991.

If the Developers are unable to prepare a detailed Urbanisation Plan at their own expense and are unable to put the requisite funds into the Junta Bank account, there seems to be no reason for the very existence of the Junta.

Perhaps the time has come for the Developers to work together with the Homeowners and the Town Hall to dissolve the Junta altogether?

7. As Mr Moya, the Lawyer representing the Homeowners, said in 1993:

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,

This remains true today.

In 2022, we do not need another set of well-meaning homeowners effectively entering into another 1993 Agreement in the form of a separate Services & Maintenance company, especially in the light of the hard-won Almeria Court Order.

LEGAL POSITION

The Cabrera Residents Association has been pivotal in bringing about the legal action to force the Junta de Compensacion to operate in a legal and honest way.

The behaviour of the Junta Board and the Town Hall suggests that it is inevitable that further Court proceedings will be required. This will require funding and Open Cabrera can think of no better cause to support than the legal action which is protecting the interests of all the Homeowners.

We would recommend that you support the residents association generously when the time comes for legal action as it is clearly more equitable for all the Homeowners to share the costs when we are all gaining the benefit. Even though we are minority shareholders, there is strength in numbers and it is time for us all to work together.

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