

Accounting study in compliance with order 181/2021 of June 17, 2021 of the Contentious Administrative Court number 2 of Almería on sentence 29712020 of November 23, 2020 ordinary procedure9/2017.

PETITIONER:

COMPENSATION BOARD CORTIJO

CABRERA C_IF: G-04179974

SIERA CABRERA

TURRE (ALMERIA)

EDITOR:

TOMAS GARCIA MURCIA

AECE Accredited

Accounting Expert ECCAA

Registration No./ 00532 /

0339NOVEMBER 2022

INDEX

BACKGROUND

DOCUMENTATION

PROCEDURE

RESULTS

CONCLUSIONS

ANNEX

BACKGROUND.

The undersigned, Tomás García Murcia, with DNI 38507345D, acting on hisas an AECE Accredited Accounting Expert with the registration number ECCAA/00532/0339, has been required by the Cortijo Cabrera Compensation Board, with registered office in Cortijo Cabrera, municipality of Turre (Almería) and with CIF G-04179974, to the preparation of this Accounting Study by virtue of judgment 297/2020 of November 23, 2020 on ordinary procedure 99/2017 and order 181/2021 of June 17, 2021 issued by the Administrative Court number 2 of Almería.

Judgment:

The aforementioned ruling basically requires a recalculation of the amounts paid since 1993 by the owners of the Cortijo Cabrera Compensation Board in accordance with the provisions of the statutes protocolized in the public deed of incorporation granted before the Notary Mr. José Ma Calvo on August 2 of 1991 under number 79 of its protocol, annulling the distribution agreements of January 14, 1993 agreed by the General Assembly of the Cortijo Cabrera Compensation Board, considering them null and void because they are contrary to law. With the aforementioned recalculation, it expressly obliges to determine the amounts that correspond to return or compensate each owner,with respect to what has already been paid since 1993.

Article 32 of the Cortijo Cabrera Compensation Board statutes in its chapter 5 "Economic Regime", establishes that "The distribution of contributions among associates will be made in proportion to the right or economic interest of each associate, defined by the participation quotas whateverholder, determined according to the bases of action."

Urbanization and maintenance expenses

The distribution and criteria applied to urbanization and maintenance expenses are based on the provisions of article 69 of Royal Decree 3288/1978, of August 25, which approves the Urban Management Regulations for the development and application of the Law on Land Regime and Urban Planning, article 98 of Law 7/2021 of December 1 promoting the sustainability of the territory of Andalusia and article 113.2 of Law 7/2002 on urban planning of Andalusia of December 17 ,~~repealed~~the latter but, in force during a large part of the exercises that are the objects of calculation.

"Article 113. Urbanization expenses.

2. In the case of application of the system of action for compensation, the expenses related to the maintenance of all the works and the services provided for in the previous section until the receipt of urbanization by the municipality."

The calculation of the participation quotas has two possibilities:

–The first make the calculation on m2 of land, this is feasible as long as when each plot enjoys the same percentage of buildability.

–The second is to carry out the calculation on the m2 of buildable area that each plot has, this is the correct one when the percentages of buildable area differ between plots.

In this study we are faced with the dilemma of the mixed operation, over the years, of the Compensation Board between its functions as such and,at the same time, with functions of Conservation Entity.

Comment [A1]: The THIRD and the CORRECT option is to carry out the calculation on the basis of m2 of land as set out in the Statutes. The two 'possibilities' put forward are pure invention.

Comment [A2]: We are not an Entidad de Conservation. There is no "dilemma". We are still an Urbanisation in DEVELOPMENT and operate on the basis of a Junta de Compensacion.

This is determined by the provision of services and supplies to the properties already built and even inhabited.

The data on which the calculations of this study are based are defined in the Compensation Project and are specified below:

110,877m² of buildable area

991,529m² of land

Of the 991,529m² of land, plots 121b, 121c, 121d and 121f are excluded, corresponding to the Hon. Turre City Council dedicated to sports areas, schools, roads and free spaces, not attributable and representing 217,729m², with the meters attributable to land as the basis for calculating participation 773,800m².

The plots described as excluded corresponding to the Hon. Turre City Council, are those indicated by the administration of the Compensation Board on which it has historically acted. The undersigned has not had access to the entire Compensation Project, insofar as it establishes a different number of excluded plots either included, the amounts detailed in this report must be recalculated.

Comment [A3]: Why has the author not had access to the entire compensation project???

DOCUMENTATION.

For the elaboration of this study, the following documentation has been used, on which I will comment the most relevant data on its reliability for the elaboration, calculation and conclusions of this study. The same

1.-Copy of the statutes notarized in public deed of incorporation granted before the Notary Mr. José Ma Calvo on August 2, 1991 under number 79 of his protocol, is attached to the report.

The undersigned has no record of modification of the themselves.

Comment [A4]: This means that the Official Statutes are applicable.

2. Copy of judgment 297/2020 of November 23, 2020 on ordinary procedure 99/2017 and order 181/2021 of June 17, 2021 issued by the Contentious Administrative Court number 2 of Almería, is attached to the report.

Comment [A5]: Telling the JDC to operate according to the Official Statutes.

3. Copy of the Expert Report of May 2022 on valuations and measurements of the facilities carried out in polygon 1 of the Cortijo Cabrera Partial Plan issued by the Technical Architect D. Salvador Cazorla Ramírez and the Technical Industrial Engineer D. Jesús Gonzalez Gómez, attached in The report.

Comment [A6]: Believed to be the Cousin of the President , Segundo Ramirez.

It is a report issued due to the difficulty of obtaining the supporting documents for the invoices stopped in the urbanization and that will be used as a justifying basis for the payments made by the promoters due to having acted in accordance with the distribution agreements of January 14, 1993 annulled in sentence. although this report does not specify. How can it be otherwise, if within the valuation there are expenses that have been paid by the rest of the proprietors in the different years, which is an added difficulty for the study.

Comment [A7]: Typical of the Developers – no records kept. The Treasurer is responsible for keeping records that can be viewed at any time upon demand.

Comment [A8]: Completely unacceptable basis, dependent solely on the word of the two main developers and written by the Cousin of the President, Developer, Promoter Segundo Ramirez.

4- Copy of the Compensation Project 110,877 buildable m2 and 991,529m2 of land and 217,729m2 of non-attributable land (roads, green areas...).

Comment [A9]: Here, the Developers may be trying to reduce their exposure by removing 217,729m2 of land from the calculation.

5.- Excel sheet provided by the administration of the Cortijo Cabrera Compensation Board that contains the following data:

- List of properties with the m2 of finished building area.
 - List of properties with m2 of unfinished buildable area. - Relation of properties with the m2 of plot.
 - Expenses for items taken from the minutes since the year 2000.
 - Sampling of expenses by items based on the 4 years of which they have data from 1993 to 1999.
 - Percentages of expenses to be attributed to all the parcels and percentages of expenses to be attributed only to the built-up plots.
- Fees paid for each plot since 1993 as indicated previously.

Comment [A10]: Why do they only have 4 years of data? Where are the records that the JDC Treasurer is obliged to keep by Law?

Comment [A11]: Total invention by the Developers. Effectively a similar arrangement to the illegal 1993 Agreement; 77% of all costs for Homeowners to pay, 23% of costs to be shared by everyone. Complete fabrication.

All these data have been provided by the administration of the Cortijo Cabrera Compensation Board, which according to what they state have been obtained from the accounting in the years in which it exists, minutes and budgets found and simple notes of the plots obtained and that have been obtained. served to verify the exercises in which the corresponding plots were already built. None of these data has been verified by the undersigned.

Comment [A12]: Totally unverified and selective data provided by the Developers. Completely unreliable.

PROCEDURE.

1º/ The amount calculated according to the valuation of the expert report document 3 has been charged as urbanization expenses and has been charged as a contribution from the promoters who have paid it according to their percentage. Likewise, each property has been charged according to its land percentage VAT at the current rate, included. It does not cost to date the issuance of invoices by the promoters. This item, considering urbanization in its

Comment [A13]: The 'expert' is the Cousin of the President Developer.

Comment [A14]: Each property has already paid its 'individualised and concrete quota' to the Developers as part of the purchase price. More fool the Developers, if they did not recover it in the sales price (and more) – not credible. The Developers have no claim against the Homeowners.

Comment [A15]: VAT at current rate is a very poor assumption. When the works were carried out, VAT was 16% to 18% and some of the works may have carried reduced VAT which currently stands at 10%.

Comment [A16]: Who knows what this means?

totality. It is the only one that is distributed in accordance with the provisions of the statutes (m2 of plot).

Comment [A17]: So this is the only area (Infrastructure Costs) where they intend to apply the Statutes correctly!!

2°/ The expense budgets have been added by items from the year 2000 to 2021 by items and the average obtained from the 4 years for which data is available for the years 1993 to 1999. These data, as described, have been obtained by the administration from the available accounting and the rest from the minutes approved in those years. With them, it is tried to separate, as approximately as possible, what corresponds to maintenance expenses of the urbanization, which corresponds to all the properties in accordance with the articles previously referred to in the section "*Development and maintenance costs*" and its own expenses as a conservation entity attributable to the built properties because they are exclusive to them. In both cases, the m2 on which the allocation of participation is based are the m2 of building area that each plot has. This is the most reasonable criterion given that they allocate maintenance expenses of the urbanization and their own and exclusive to building plots. As there are no urbanization expenses or all the plots have the same buildability, and even some with zero buildability, the correct thing to do is to treat this section as it would be done in a conservation entity.

Comment [A18]: Why has the Treasurer not fulfilled his legal obligations to keep accurate records?

Comment [A19]: We are not an Entidad de Conservacion. We are a Junta de Compensacion.

Comment [A20]: The correct thing to do is to follow the Statutes as we are an urbanization which is still in Development under a Junta de Compensacion.

3°/ The budgets and accounts of the last 5 years have been reviewed, in order to delimit as approximately as possible, in the total of the year, the items corresponding to maintenance and improvement expenses of the urbanization and those of the built plots . This calculation has entailed great difficulty due to the "non" historical division of these expenses motivated by the agreement of January 14, 1993. Some expense items are easily identifiable, others have had to be analyzed and the percentage has varied significantly due to some investment or extraordinary expense, the resulting average with little variation between exercises is 23% common to all plots with buildable area and 77% to built-up plots. Items such as "

4°/ Based on the historical data and the simple notes obtained, the properties with their corresponding building data are in the quadrant.

50/ Finally summarized the amounts that each plot would have to pay for the different concepts and those that have actually paid in order to obtain the differentials to be entered or compensated, thus complying with what is indicated in the sentence with "the greatest degree of possible reliability given the difficulty due to the wide period that it contemplates and the already indicated grouping of bills.

Comment [A21]: There is no question that the input data, the assumptions, and the inventions put forward in the this report are deeply flawed and unreliable. What does the Court expect if the report is jointly written by the Developers and those chosen by the Developers including family relatives?

RESULTS.

1st/A Below is a **provisional table of the part that corresponds to each plot for the urbanization expenses paid at the time by the promoters according to the expert report (document 3) that is attached, calculating for each property the amount that corresponds to it based on its percentage of land share.**

Comment [A22]: EVEN THE AUTHOR KNOWS THAT THE BASIS OF THESE CALCULATIONS AND THE BASIS OF THE ASSUMPTIONS MADE ARE SO WEAK THAT EVERYTHING NEEDS TO BE LABELLED 'PROVISIONAL'