

## URBANISATION COSTS AND MAINTENANCE FEES

OPEN CABRERA  
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Homeowners in Cabrera are very unsure about their financial obligations regarding historical urbanisation costs, potential future urbanisation costs and ongoing 'maintenance and conservation' costs. This is not surprising as the Cabrera Developers have conjured up artificial financial models purely to benefit themselves and disadvantage the Homeowners.

In essence, they have invented an 'alternative reality'. Indeed, one local Developer (not in the Junta) has described this as "drawing the Homeowners into '**The Matrix**'".

Prior to the April 2023 EGM (which was cancelled by the Developers 1 hour before the scheduled start), the Developers issued a "Technical Report" which was prepared by friends and family of the Developers. We understand that the report was paid for using Homeowner funds. This hugely discredited report demonstrated the intentions of the Developers very clearly.

For those of you that have read the report, it is worth reflecting on the difference between Deception and Fraud:

The difference between deception and fraud is that DECEPTION is an instance of actions and/or schemes fabricated to mislead and/or delude someone into errantly believing a lie or inaccuracy while FRAUD is any act of deception carried out for the purpose of unfair, undeserved and/or unlawful gain.

Interestingly enough, both are considered to be criminal acts.

**As various lawyers conduct extended investigations into Homeowner obligations, Open Cabrera has decided to outline its views on matters below. These views are not legal views but are based on our investigations and research.**

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The land in Cabrera was initially owned by the principle land owner, Peter Grosscurth. It appears that the Plan Parcial was approved in November 1988 and was published in the BOP No 270 21/11/1989. It was approved by Turre Town Hall on 07/06/1990.

The Parcial Plan contains:

- Building standards
- Buildability permissions for particular areas
- Phases of urbanisation works
- Infrastructure requirements
- Plot descriptions
- Estimated budgets for the urbanisation works

The first Developer, Peter Grosscurth, sold land with property constructed upon it prior to the above approvals so there were existing houses in Cabrera when the Parcial Plan was signed off in 1990. However, these houses were not built without any infrastructure being in place.

There were existing access roads, water supply, and electricity. It is unlikely that there were any sewage systems in place as the 2 treatment plants were not installed. It seems that the Developers were embroiled in an argument at the time (1998 -2000) about the value of the urban works

undertaken by Peter Grosscurth. Ironically, this is somewhat similar to where we find ourselves today with the Developers trying to claw undeserved financial gain from historical infrastructure costs.

Land with homes was also sold in the period following approval of the Parcial Plan in 1990 up to the point of final approval of the Proyecto de Compensacion (2000). It should be noted that no additional urbanisation works were completed in the period 1993 –to the date of final approval of the Proyecto de Compensacion (2000). This would have been so because, until the Proyecto de Compensacion was finalised, the quotas for contribution by the Developers would not have been known.

The Proyecto de Compensacion sets out:

- The costs for carrying out the required urbanisation works
- Who is responsible for the urbanisation costs
- Which plots of land will be urbanised
- The level of buildability for each plot of land
- The amount of executed buildability for each plot of land
- Which plots of land are exempted from Urbanisation costs

The Proyecto de Compensacion seems to have evolved over time:

#### **AGM 26-10-1995**

Point 7.2 – “The Project of Compensacion will be notorised shortly”.

#### **AGM 29-10-1996**

Point 4 – The Project of Compensacion has been approved.

All homeowners will have to re-register their properties again in the Registro de Propiedades. (*this will fully legalise their properties*)

#### **EGM 05-06-1997**

The purpose of the EGM was to agree the revised Project of Compensacion i.e. to correct changes in ownership, name corrections and to re-affirm the quotas of participation. Point 2 – All existing houses will be completely **legalised** and registered as such in the Registro de Propiedades

#### **AGM 12-11-1997**

Point 4 – The Project of Compensacion has still not been approved.

**The Proyecto de Compensacion was eventually approved on 30 November 2000, and a term of execution of 24 months was established.** Subsequently, the Developers failed to comply with the terms of execution of the urbanization works in the Proyecto de Compensacion for Poligono 1. After 23 years, the Developers have still not completed the Urbanisation works.

Prior to and following approval of the Proyecto de Compensacion, the AGM minutes demonstrate that there were ongoing difficulties in getting the requisite funding out of the Developers – a situation which has continued for over 30 years.

Annex 6.3 of the Proyecto de Compensacion identifies those parcels of land (more than 100) and the respective owners that were excluded from participating in the costs of urbanisation. The majority of the owners identified in this annex were individual homeowners but the key exceptions were:

- Turre Town Hall (The TH land and the buildability is ceded over as part of development process)
- Cortijo Cabrera S.A.

- Cortijo Greens S.A. (The owners of this company are the architects who prepared the urbanisation plans. It is thought that the payment of their fees could possibly have been land free of any charges.)
- David Bryant Bowling Centre S.A.
- Peter Grosscurth
- Promociones Mataix S.A.

At the time of approval of the Proyecto de Compensacion, it is believed that existing Homeowners were exonerated from contributing towards the urbanisation costs as they had already contributed their portion of urbanisation costs to Peter Grosscurth prior to approval of the Parcial Plan.

We believe that those Homeowners who built between the date of approval of the Plan Parcial (1990) and the date of the final approval of the Proyecto de Compensacion (2000) were also excluded as their fair urbanisation contributions were deemed to have been fulfilled in the purchase prices of their houses. For the Town Hall and Cortijo Greens, please see the comments above.

The Proyecto de Compensacion states that the owners acquired their properties as net land i.e. there were no further development opportunities. These could be classed as the **1st block of owners** ie. Those that were 'consumed' by the Junta de Compensation at inception in 1991 but had already contributed to Cabrera infrastructure through Peter Grosscurth and therefore exempted from infrastructure costs)

The Proyecto de Compensacion goes on to state that Cortijo Cabrera S.A. has sold its land holding and in so doing transferred all the obligations to the 6 organisations identified. It will be the legal responsibility of these 6 companies to pay for the remaining urban works outstanding. These 6 companies can be classed as the **2nd block of owners** ie. The full list of Original Owners or Promoter /Developers who were and continue to be responsible for paying the infrastructure costs:

#### 1.8.- Costes de urbanización

En aplicación del art. 163 L.S. los gastos de urbanización se distribuirán proporcionalmente al aprovechamiento de las fincas que le correspondan a cada titular de la compensación con obligaciones de urbanizador, como se menciona en el epígrfe 1.2 de este documento. Estos son:

Urbanización Cabrera S.A.  
 Active Retirement Villages LTD.  
 Promciones Mataix S.A.  
 Fortview Properties LTD  
 Promociones Mojácar, Vera y Garrucha S.A.  
 Segundo Ramirez

Over time, these companies seem to have evolved into the following list (as recently published by the Town Hall and communicated to Junta President Segundo Ramirez following his query) all of which have inherited the responsibility of providing and paying for the infrastructure:

Sierra Leysure S.L.	44,87 %
Active Retirement Villages LTD	35,05 %
Fortview Properties LTD	1,17 %
Promociones Vera Mojacar y Garrucha.	2,52 %
Promociones Mataix S.A.	4,30 %
Promociones Mataix S.A (Banco Andalucia)	3,55 %
Segundo Ramirez Perez	8,55 %

Note: Leysure should read 'Leisure'

There is a **third block of owners** referred to in the Proyecto de Compensacion which are those that purchased after the approval of the Plan Parcial in 1990 and before the finalisation of the Proyecto de Compensacion (Compensation Plan) in 2000. These will have the same classification as those that purchased in the 1st block. ie. They will be exempt from infrastructure costs and listed as such in the Proyecto de Compensacion.

It should be noted that at the time of committing to the Proyecto de Compensacion in 2000, all the existing Homes in Cabrera would be **legalised (EGM 05-06-1997)**. This was a significant benefit to all those that were included in the Project as, in reality, all the houses in Cabrera may have been illegal.

There is also a "**fourth block of owners**" who bought in Cabrera after the approval of the Proyecto de Compensacion in 2000 (these owners are obviously not referenced in the Proyecto de Compensacion). These purchasers of land or (land with a new house) do not enjoy any benefits of bringing land into the development at inception. Instead, they are purchasing within it and so cannot enjoy the benefits of any of the urbanisation charges. The responsibilities for financing the urbanisation were already clearly established and allocated in the Proyecto de Compensacion. This means that this fourth group of owners is exempt from infrastructure charges although their contributions towards urbanisation costs will, without doubt, have been included in the purchase prices of their homes. Because they did not exist in 2000, this group of Owners are not included in the Proyecto de Compensacion and are not identified as having any financial obligations towards completing the urbanisation by November 2002.

It is evident from the Proyecto de Compensacion that the 1st Block of Owners has the obligation to participate in the costs of conservation and maintenance of the urban services (as do the 2<sup>nd</sup> Block of Owners – the Developers). Whilst it is not explicitly stated it is implied that the 3rd block of Owners would have the same obligation to participate in conservation and maintenance costs as they are excluded from urban costs for the same reason.

The Proyecto de Compensacion is clear with respect to obligations for urban costs and the subsequent conservation and maintenance costs. It states an obligation to participate in conservation and maintenance but not to assume the entirety of the costs. This is true for all the listed owners including the Developers.

After the finalisation of the Proyecto de Compensacion in 1990 it would have been the responsibility of the Developers identified in the Proyecto de Compensacion to recover their costs of urbanisation from the purchasers of their land / land with villa constructed. If the Developers did not recover the urbanisation costs in the sale then it is our view that this should have been made explicit in the written in the Escritura. The Cabrera Statutes are clear about this. Each plot has a fixed urban contribution so it would have been easy to identify what this liability would have been.

## CONCLUSIONS

The relevant legal reference documents appear to be:

- The Plan Parcial (1988)
- The Cabrera Junta de Compensacion Statutes (1991)
- The approved Proyecto de Compensacion. (30 November 2000, 24 month completion period)
- Individual Escritura

### Allocation of Maintenance & Conservation costs

1. If the Promoter-Developers had fulfilled their obligations in the Proyecto de Compensacion to complete the urbanisation in 24 months (by November 2002), we would not be in the position of having to pay maintenance and conservation fees today. The urbanisation would have been complete and handed over to the Town Hall in 2002 and we would be paying our IBI. We would not be paying Junta Maintenance & Conservation fees.
2. It is right that the ongoing Maintenance and Conservation costs are shared in proportion to land ownership as stated in the Statutes. More land equals more road connections, more pavements, more street lighting, more buildability prospects, more wear and tear on infrastructure by construction activities, more water pipes, more sewage plant capacity, more electrical infrastructure, more water deposits.....all of which need to be Maintained and Conserved until the Developers fully complete the infrastructure and hand it over to the Town Hall as they promised.
3. For as long as the Developers intend to develop Cabrera, they should be paying their fair share towards the Maintenance and Conservation costs.
4. Maintenance & Conservation costs are apportioned strictly on the basis of quota of participation (land area). Maintenance & Conservation costs are due on the basis of land ownership alone.
5. The contributions are **not** calculated on the basis of any “buildability based formula”. The contributions are **not** dependent upon whether a house has been built or not. The costs are **not** artificially apportioned, some to Homeowners alone and some to all Owners. These fabrications are all inventions by the Developers to avoid their financial obligations.
6. Where an **Original Land Holder** sells a plot of land, the Statutes are clear in Rule 16 that the commitment to the ongoing costs relative to the maintenance of the works and services of the urbanisation has to be explicit in any sales contract / deeds.
7. There is a question as to whether the Town Hall is exempt from Maintenance & Conservation fees, or whether they need to contribute on the basis of land ownership?
8. Furthermore, the Junta de Compensacion Statutes are the foundation on which the Proyecto de Compensacion is developed. So, the Statutes must apply. The Statutes would be the reference point and the Statutes are clear about apportioning Maintenance and Conservation costs on the basis of land ownership (participation quota).

## Allocation of Infrastructure Costs

9. If the Promoter-Developers had fulfilled their obligations in the Proyecto de Compensacion to complete the urbanisation in 24 months (by November 2002), we would not be threatened with having to pay historical or future infrastructure costs today.
10. If the Town Hall had met their legal duties to control the Junta de Compensacion and the Developers properly, we would not be threatened with having to pay any infrastructure costs today. Instead of obliging the Developers to complete the infrastructure according to the Proyecto de Compensacion, the Town Hall enabled the Developers to sell hundreds of houses without the infrastructure being in place.
11. Homeowners do not have to pay for any infrastructure costs (aside from in the purchase price of the their homes from Developers)
12. It is very clear that the charges and benefits of creating the urbanisation all materialise for the Original Land Holders who brought their lands into the development at the start. In Cabrera this would include not only the principle land holders but also those individuals that had existing houses on plots of land that would be consumed by the development. It is this group that have the liability for the urban costs and the Statutes are very much written in this way.
13. Rule 10 of the Statutes states:

The total costs of urbanisation and of evaluation and indemnities will be met by the Compensation Plan worked out in the course of the present Rules, and in the application of the criteria established in them, by means of the setting of individualised and concrete quotas which each member is required to pay.

14. Purchasers of land or (land with a new house) after the establishment of the Proyecto de Compensacion do not enjoy any benefits of bringing land into the development at inception. Instead, they are purchasing within it and so cannot enjoy the benefits of any of the urbanisation charges.
15. The logic of why ‘buildability’ is one way of allocating the costs is understood. It does seem to be fairly appropriate for Infrastructure costs as it relates to potential return on investment for the Developers.
16. However, the use of ‘buildability’ to apportion infrastructure costs is solely a matter for the Developers and this was agreed between them in the Proyecto de Compensacion. The fact that the Promoters agreed, in the Project de Compensacion, to allocate the infrastructure costs between them on the basis of ‘buildability’ is a matter for them.
17. Remember “**the Matrix**”! There is yet another story in circulation that Homeowners will be obliged to pay for infrastructure costs unless there is an **‘EXEMPTION’** clause in their Escritura. We firmly maintain that we have all paid more than our full and fair contribution in the purchase prices of our houses, and any **OBLIGATION** to pay any more should be clearly stated in the Escritura.

Further to this, **Open Cabrera** wishes to notify all Homeowners that they each owe us €100,000 unless they can prove otherwise by means of an ‘exemption clause’ in their Escritura.



**Roll On Independence Day!!**