

A Review of the Treasurer's Diatribe

OPEN CABRERA
18 October 2023

Dear Cabrera Owners.

It is disconcerting the lack of confidence of owners trusting the Junta de Delagado's resolving the complicated and laborious effort in resolving the 30 years backtracking owner's historical contribution, preferring to believe the false, misleading information, circulated by of so-called informed groups.

We have very little faith in the statements of the Junta Board or their 'advisors'. They have lost all credibility through their actions so it should come as no surprise at all that the Homeowners have zero confidence in the Junta de Delegados.

The Team have voluntary and thanklessly dedicated hundreds/probably thousands of hours, resolving this unique, legal, and immense complicated situation instigated by the CRA, the previous homeowner's association, supported by the susceptible.

*We have heard this story so many times now. The resolution of this situation is not difficult. It is very easy – just follow the law. To assist, **Open Cabrera** will release a spreadsheet to help everyone determine what they need to contribute towards any annual Junta Maintenance & Conservation Budget. By entering the legal and honest budget (wishful thinking), the spreadsheet will calculate what you owe for the year. It takes fractions of a second to calculate, not 1000's of hours.*

Shortly you will receive the final analysis of maintenance contributed backdated to 1993, owners entitled to a refund are, (small properties with minimal land, having contributed for 30 years, they will be happy), unlike those (larger properties and land, not having contributed these 30 years) they will receive a demand backdated to 1993).

We have zero belief in your final analysis because you were completely wrong with your first version in November 2022 (cancelling the April 2023 EGM as a result) and it is more than likely that you will be wrong again in November 2023. You cannot simply invent formulae to suit yourself.

Recent owners will still be liable or beneficial to the property amount contributed to date, irrespective if they only purchased the property yesterday.

As Mr Jerez revels in the above statement, he seems to be of the belief that he can off-load his earlier financial obligations (debts) onto oblivious buyers of one of his plots or properties. In other words, Mr Jerez seems to be of the opinion that any buyer will 'inherit' all the prior debts that Mr Jerez incurred on the property which, of course, is a conman's dream. There is a general slipperiness about the statement that I am sure that all Homeowners and prospective purchaser in Cabrera will understand.

If this were to be true, any prospective buyer in Cabrera would need to consider the situation very carefully. In essence, Mr Jerez's statement could cause a complete collapse of the property market in Cabrera including his desire to sell Los Pastores restaurant and the Development as a whole for the hugely ambitious €7 million price tag.

We refer Mr Jerez to Rule 16 of the Statutes:

In the agreements between the Junta or the property owners on the one hand and the buyers on the other, there must be agreed a commitment relative to the maintenance of the works and services of urbanisation which, according to the urban planning, the future proprietors must take over from them.

That this may be so, the Junta and vending owners must expressly point out these commitments in the sales contracts of plots or buildings, with absolute acceptance of such commitments by the buyers. The contracts must be duly formalised in a public deed inscribed in the Property Register, a copy of which must be presented to the Town Hall, so that the dealings and agreements with third parties come into force before this administration, leading to the ownership by the new owners.

Before condemning the Delegados for the increase in your contribution, I remind all, it is the CRA., together with the nonthinkers who are responsible for instigating the legal action cancelling the 1993 agreement. Various owners having finally realised the almighty economically destructive blunder this has caused them, have requested the reinstatement or an agreement like what we had, but its legally impossible. The Delegados and the Junta de Compensacion are officially required to comply with the Court Ruling and our Statutes.

The JDC needs to comply with the law rather than making up rules to favour the Developers. You need to start paying your way, Mr Jerez. We've been telling you that for years.

The 1993 cancelled agreement; I personally and conscientiously have defended it over the years. In my opinion it was a successful working formula, beneficial to all homeowners who paid for the maintenance of the urbanisation services as its them who used it and cause wear and tear requiring repair. In return, The Developer Peter Grossgurth, exonerated them for all new future urbanisation infrastructure contributions (stipulated in our Statutes). It worked well for over 25 years, and I am proud achieving it. Consequently, for defending it, I have suffered being aggressively criticised, my name and reputation slandered, my Integrity defamed, office windows smashed, my car paint work scratched, glue in office door locks etc. etc.

The above paragraph addresses a multitude of items. Let's consider the wonderful "1993 Agreement that you continue to promote. The alleged (illegal) agreement was that the Cabrera infrastructure would be completed by the Developers if the Maintenance and Conservation costs were covered by the Homeowners.

In 1999, the Developers signed up to the Plan Parcial to complete the infrastructure by November 2002, a 24 month period. They had squabbled in the period between 1991 and 1999, refusing to put up funds.

So, in November 2002, the Cabrera development should have been handed over to the Town Hall and we should all have been on our way.

Instead of completing the Development, Cabrera is only 39% complete in terms of infrastructure in 2023, some 21 years after it should have been completed.

So, the Homeowners have paid for all the Maintenance and Conservation costs since 1993 (for 30 years) and they have effectively kept their side of the 'bargain'. However, the Developers have paid nothing and have not yet completed the infrastructure as they promised. To add insult to injury, in 2019 you attempted to foist €250,000 of transformer infrastructure costs onto the Homeowners with no contribution of your own at all.

The Homeowners should only have paid Maintenance and Conservation costs until November 2002 in terms of the (illegal) 1993 Agreement. Instead, the Homeowners have been held captive by the Delinquent Developers ever since.

Please note that our Treasurer, Mr Jerez, has passed the blame for the 1993 Agreement onto the deceased developer Peter Grossgurth, while simultaneously declaring himself to be 'proud of achieving the 1993 Agreement'.

So, the questions to Mr Jerez and President Segundo Ramirez (two largest Developer stakeholders in Cabrera) are as follows:

"Where is our infrastructure that you promised? Why is it not complete?"

You said you would provide it in the 1993 Agreement.

Is it the case that our missing infrastructure is effectively represented in the 10 properties that you own and the house in Vera? When buyers purchase a home, they do rather expect you to have the infrastructure in place as part of the deal. In fact, it is illegal to sell a house without the infrastructure being in place.

When you label the Homeowners as "its them who used it and cause wear and tear requiring repair", it is deeply insulting. As you know, the Homeowners are modest users of the infrastructure as many of them are transitory and only in Cabrera for short periods every year. The biggest wear and tear on the infrastructure has been caused by the Developers who have been building houses in Cabrera since 1991 – 100's of houses. To add insult to injury, the Homeowners have been providing the Developers with a 'free warranty' on all the infrastructure since 1993 – Homeowners have paid to fix everything when the Developers should have finished the Development in November 2002. You have paid nothing!

Why should Homeowners have an everlasting obligation to pay for the Maintenance & Conservation of Cabrera simply because you have failed to meet your obligations as Promoter- Developer? ie. Failed to provide the complete infrastructure to the required standard in 2002.

We do not support the damage that has occurred to your property at all. We understand that this may have happened several years ago. However, we must point out that when two Developers are seen rolling about in the dust in a brawl at the Arch Bar, when employees have pay disputes and when concrete is poured into the Cabrera drains, it is highly unlikely that this is as a result of you defending the "1993 agreement".

Owners have complained the timescale it has taken complying with the court judgement without considering the legal implications involved. The judge recognised it was difficult but not impossible. But it has been a long laborious and complicated task ensuring and scrutineering the 30 years backdated information provided is accurate as humanly possible in preparation for it being distributed.

This is not so – the records are readily available for Maintenance and Conservation fees– it is a statutory obligation. The problem that you have is that you have not kept any JDC accounts at all for infrastructure spend which is a breach of the Junta de Compensacion administration requirements.

This alone, should result in the Town Hall barring you from performing any role on the Junta Board, let alone Treasurer.

This is why you have tried to re-create the infrastructure costs using reports written by ex-employees and family members (and paid for by the Homeowners) . You have no claim at all for historical infrastructure costs in any event because the Developer-Promoters signed up to fund the infrastructure in the Plan Parcial, and Homeowners have in any event effectively made their infrastructure contributions in the purchase price of their homes.

Furthermore, in your so called "1993 Agreement", you confirmed that you would complete the infrastructure – so where is it? You always defend and honour your agreements, don't you?

Advancement has been made. The infrastructure cost calculation, presented, and approved by the 2022 assembly as well as the system of invoicing for year 2022 and 2023, they fully and legally comply with a Court Judgement.

This was not approved by the Assembly and certainly does not comply with the Court Judgement. This was self-approved by a pair of Developers that own 44% of the land using their Block Vote, and who simultaneously manipulated the Town Hall's voting rights down from 29.7% to 10%.

Mr Jerez, If you had calculated the amounts that the Developers owed in arrears to the Junta de Compensacion properly as instructed by the Court, you would have recognised that you were enormous Debtors and therefore not entitled to hold any voting rights at all. You would not even be empowered to vote on this issue. Only this week, you personally under-estimated your debt at €800,000.

The final action, the presentation of the Economists audited contributions made by owners dating back to 1993, will shortly be presented, thereby finally complying with the court judgement.

Now we have the 'anonymous Economists'. We wonder who they are. These calculations will, without doubt, be incorrect and fudged again.

The current homeowner association (8th to date) innocently believe they can take over the management of Cabrera, but it is legally impossible. There can only be one legal entity representing the urbanisation, anything else is simply a group of owners or friends with no legal authority.

Mr Jerez, you seem to forget that it was you that insisted on the formation of a separate company to take over the services and maintenance for Cabrera in your email dated 7 July 2022. It was not the "8th Homeowners Association" that innocently believed anything. It was your own suggestion but now you try to re-write history as usual.

Open Cabrera wrote to you at the time:

"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."

The Junta de Compensacion is the only legal entity that can represent Cabrera in all aspect, including court representation defending the urbanisation, submitting maintenance budget, and claiming outstanding fees, employing personnel, complying with the statutory Social Security, submit water analysis reports, and end of year financial accounts, as well as dealing with the Town Hall etc.

Yes, Mr Jerez, we all know this but thank you for stating the obvious. Eventually your most recent set of lawyers in Seville put you right (they seem to change all the time). Are they just taking the fees (Homeowner money) or have they also walked away yet?

Any professional lawyer in the field of Urbanisation and Junta de Compensacion, will confirm no individual association or groups can legally represent the urbanisation. Most lawyers are misunderstanding Cabrera as a "Community of Owners" which is not. Cabrera is a "Junta de Compensacion", officially a subsidiary of Turre Town Hall. They are entirely separate legal system. If the current homeowner's association, wishing to take over the management cannot distinguish the legal differences, how then do they propose administering Cabrera?

Thank you for explaining this to us. We all knew this already. Why did you not know this when you insisted on creating a separate services & maintenance company in your email dated 7 July 2022? By the way, none of the Lawyers representing the Homeowners are under the misconceptions you describe above.

So, how would the Homeowners Association propose that Cabrera is administered? Here is a 4 point plan:

1. Remove the delinquent JDC Board en-masse.
2. Enable Homeowners to stand for JDC roles without interference or obstruction
3. Prepare honest budgets and raise honest invoices.
4. Purchase external services as required

Mr Jerez, if you think that this is unachievable, please cast your eye towards our neighbours in Cortijo Grande. You will see a development that has made remarkable progress without your expert knowledge of the mountain. You will see well maintained roads in comparison with the pot-holed and decaying embarrassment in Cabrera. And, there is not a Developer in sight!

They are irresponsibly dangerous advising owners not to pay the legally presented maintenance contribution. (whether it is to your liking or not, it is legally what it is, complying with our Statutes). If there are insufficient funds for the maintenance, Cabrera will simply closedown. Some owners, are paying less than €2 for the water consumed and not for the maintenance, believing it will safeguard their property, a delusion of credulous and foolishness. If water leaks are not immediately repaired and the distribution system maintained, you will NOT have any water within days to your property.

There would be no problem at all in Cabrera if the Junta de Compensacion raised invoices in accordance with the Cabrera Statutes and the Law. You cannot expect people to simply give you money because you demand it, because you invent fee calculations to suit yourself, and because you wish to avoid your obligations. Mr Jerez, you need to start paying your way as one of the Junta Promoter-Developer landowners.

Mr Jerez, you need to understand that Cabrera is an URBANISATION IN DEVELOPMENT with a "Junta de Compensacion" operating under a set of Statutes and not simply a "Community of Owners". We understand your mistake- you point out above that 'Most Lawyers get it wrong'.

Our workmen cannot and will not be employed by any association, neither can they be replaced with alternative labour or contractors, Cabrera is our workmen legal established workplace. They are protected by the Governmental Employment Regulation; Question: ¿are they voluntary going to switch from a permanent guaranteed employment of the Junta de Compensacion with its security, to a simple association that has no legal recognition to administer the urbanisation in any way?

Mr Jerez, if you refer to the Statutes with which you are so familiar, you will see the following:

Article 23 - Personal Services

The Junta will operate by means of the personal services lent by its members, unless such services should prove insufficient or too onerous for those holding office.

However, in exceptional circumstances, necessary personnel may be contracted as required: these will be remunerated within the budget resources authorised by the General Assembly.

The main reason for the existence of the Junta de Compensacion is to oversee the urbanisation (provision of infrastructure) of Cabrera. You have turned the Junta de Compensacion into an organisation which has no urbanisation activity at all to oversee. No urbanisation has taken place for the past 15 years and the Junta de Compensacion has effectively been transformed into a very small "Maintenance & Conservation" operation because of your failure to build the infrastructure ie, something which is not its core function. In fact, it is recorded in historical AGM Minutes which you personally signed off that the Junta de Compensacion is "not permitted to sell services in exchange for money".

The Junta de Compensacion should be able to 'buy-in' services as required but should not be directly employing ex-personnel from your defunct construction company, Vaitier or anywhere else. In addition, the Junta Board should not be selling these 'services' for disproportionate amounts of money to Homeowners. This would not be

happening if you and your fellow Developers had met their obligations and completed the Infrastructure in 2002.

Similarly, you should not be awarding yourself large amounts of money for the following:

“The administration costs for the office, electricity for lighting, heating, and air conditioning, office telephone, accounts, and personnel, storage for years of files, storage for the generator, for the workmen’s tools and machinery, workmen rest room, as well as for materials, Cabrera social functions tables and chairs and other items. In total contributes 12,000€ per annum, owners are paying just 60€ per year per property for administration and ample storage.”

This has now risen to €15,600 per year. We don’t need the bulk of this.

From now on the Junta lawyers will no longer be processing the recovering of all outstanding maintenance fees. Turre Town Hall, together with Diputacion in Almeria, have agreed to legally process debtors “Via Apremio”: (It consists of requiring one or more owners to pay immediately the arrears owed to the Junta de Compensation board or risk being expropriated with everything). It will also include a 20% surcharge on the amount claimed as well as embargoing your bank account, vehicle and eventually your property,

Once again, we refer you to the Statutes, Rule 15-Financial System, which sets out what is described above. There is a mechanism described in the Statutes which provides for the alleged ‘debtor’ to contest their case with the Town hall.

Mr Jerez, you should know that the Junta lawyers are not empowered to process the recovery of all outstanding maintenance fees including the €2,500,000+ that is owed by the Developers. By the way, we look forward to the recovery of this money which has been misappropriated under your governance.

*We also point out that your decision to take the law into your own hands has resulted in a number of Cabrera Homeowners having their water cut off by the JDC for several years. The process in the Statutes is not to disconnect their rights to a water supply. It is to work through the Town Hall to deal with the ‘alleged’ debt as described above. Isn’t it ironic that these people are probably not debtors (like yourself) after all? How are you possibly going to compensate them for this travesty? **Surely, at the very least, the water supply should be reconnected to their properties immediately.***

The Town Hall and the JDC are subject to a Court Instruction to charge fees in accordance with the Statutes. As you are clearly not charging fees according to the Statutes, it would be supremely stupid of the Town Hall to initiate any reclamation process. The Diputacion in Almeria has recently met with the Town Hall to emphasise their need to comply with the Statutes so there should be no misconceptions.

Furthermore, it is not surprising to see that you have invented a figure of a 20% surcharge, when the Statutes specify a “surcharge equivalent to the basic interest rate of the Bank of Spain”. As always, you have a tendency to simply make things up as you go along.

The Town Hall has recently experienced a lot of misfortune in the Courts – As the following article states “Happiness does not last long in the poor man’s house. Just ask the Turre Town Hall”:

http://www.almeriahoy.com/2023/04/turre-grogui-tras-recibir-un-bofeton.html?fbclid=IwAR2CYrn_y6DwYRkt_cjwXYdpPATZqenioZyFYizBXhJ9MgNSD4tMBLIPb4U&m=1

Essentially some land was appropriated from the Rubio family in 1986 but the Turre Town Hall ‘forgot’ to compensate them. The Court has now decided to award the Rubio family €1,200,000 with late payment charges of €100 per day from June 2021 ie. An extra €3000 per month of payment delay.

It seems that there were many misdemeanours on the part of the Town Hall in the 80’s and 90’s. Just consider the establishment of the “1993 Agreement” which the Courts have now deemed to be illegal. In reality, this could be described as a ‘Joint Venture’ by the Cabrera Developers and the Town Hall. Now, the Administrative

Court has instructed both the Town Hall and the Junta de Compensacion to charge fees and operate according to the Statutes but this has not happened.

The Town Hall would have to think very carefully about initiating any 'debt recovery' process on the basis of corrupt invoicing or corrupt technical reports. The numbers at stake are much higher than the Rubio family's €1,200,000.

We do need to worry about the poor residents of Turre who, it seems, have to pay the bill for these Town Hall aberrations, and apparently for some Developers who don't believe that they have to pay IBI. The man in the street has to pay for this.

Finally, we have appointed Cabrera a General Manager, Rodrigo Sanchez. a lawyer with vast experience with Urbanisations Law and Management. His responsibilities will be dealing with everything the Junta de Compensación has to deal with, supervising maintenance, services, finances, organising meetings etc , thereby taking on the tasks previously undertaken free of charge by the unpaid delegados. He will shortly provide his own introduction together with the complex final list of the historical contributions.

So, Mr Jerez, if this is the case what are all the unpaid Delegado's going to do with themselves?

They serve no purpose at all as you intend replacing them with someone to deal 'with everything the Junta de Compensacion has to deal with'.

There is no development taking place in Cabrera, the supervision of which is the JDC Board's primary function.

The above declaration is a formal statement of abdication. The current Junta delegados are simply no longer required.

As the Junta Board has effectively abdicated, the roles should be put out to the Junta Members so that we can find people of integrity to selflessly perform the roles rather than appointing Mr Rodrigo Sanchez.

We again refer you to Article 23of the Statutes:

Article 23 - Personal Services

The Junta will operate by means of the personal services lent by its members, unless such services should prove insufficient or too onerous for those holding office.

However, in exceptional circumstances, necessary personnel may be contracted as required: these will be remunerated within the budget resources authorised by the General Assembly.

Clearly, the administration of the dormant Cabrera Urbanisation is proving to be too much for the current Board members. However, we are absolute certain that there are other Junta members that are quite capable of carrying out these functions honestly and free of charge. Therefore, the cost of Mr Rodrigo Sanchez is quite unnecessary and he should clearly not be engaged. The Homeowners should not be paying for his services.

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