

## AGENDA ITEMS FOR THE FORTHCOMING CABRERA POLIGONO 1 AGM

17 December 2023

**Attention:** Mr John Bailey (Secretary of the Junta de Compensacion)

Please include the following Points of Order:

Please ensure that the questions and the answers are recorded in the minutes.

### **POINT OF ORDER 1 TOWN HALL VOTING RIGHTS**

For over 30 years, the Town Hall has owned 29.7% of the land in Poligono 1 and has therefore held 29.7% of the voting rights in the Junta de Compensacion in accordance with the Statutes. This is how it has always been.

After the 2021 AGM, the Developers unilaterally changed the Voting rights of the Town hall from 29.7% to 10%. This seems to be driven by the wish of the Developers to increase the percentage of their block votes, in clear opposition to the interests of homeowners, and must be seen for what it is: an abuse of their power.

We are not aware of any due process, nor have the other members of the JDC been consulted about this important change which is contrary to the Statutes (Art. 14, Base 3ª y Base 11ª), a change which has not even been raised as an item at any AGM.

We state our absolute opposition to this underhand change in the voting rights and regard this as an abuse of power by the Developers who carry an overwhelming Block Vote.

#### **Question 1 - To the Mayor**

Does the Mayor of Turre, Arturo Grima, and the Town Hall Architect agree with this fundamental change to the Town Hall voting rights?

#### **Question 2 - To the President and Treasurer**

Whose decision was it to change the Vote Share of the Town Hall which has been 29.7% for the last 30 years and what was the reason for doing so?

### **POINT OF ORDER 2 VOTING RIGHTS ACCORDED TO EACH OWNER**

Because the Junta Board has been manipulating the Voting rights, individual Owners have absolutely no idea what vote share they hold.

We request a complete list of owners be provided for each plot together with its accorded voting percentage, together with a definitive list of Homeowners and Developers. We request that this is distributed in advance of the AGM, and recorded in the Minutes.

**POINT OF ORDER 3  
FEE CALCULATIONS**

Owners have no idea how their fee invoices are being calculated and the Junta has declined to clarify this. We request that a clear formula is published as to how the Maintenance & Conservation fees are calculated for each Owner. We request that this is distributed in advance of the AGM and recorded in the Minutes.

**POINT OF ORDER 4  
TO CONFIRM WHO PAYS FOR THE INFRASTRUCTURE IN CABRERA TO BE COMPLETED**

The Junta President asked the Town Hall who is responsible for paying for the infrastructure in Cabrera. The Town Hall Architect replied in a letter to the President on 22 June 2021 as follows:

El proyecto de Compensacion establecio los propietarios obligados a costear las obras de urbanizacion y que son según consta en el Proyecto de Operaciones Juridicas Complementarias al Proyecto de Compensacion del Poligono 1 los siguientes:

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 %

The Town Hall has made it quite clear that the entities that are responsible for the urbanisation costs are the Promoter-Developers which are listed in the Proyecto de Compensacion.

Please could we have confirmation from the Junta de Compensacion, specifically the Junta President and Junta Treasurer, that they recognise this.

**POINT OF ORDER 5  
CLARITY ON THE USE AND ABUSE OF THE DEVELOPER BLOCK VOTE**

In Spain, Junta de Compensación is a legal entity responsible for the development of a certain area of land. The decisions are made by block voting in which each member's voting power is weighted according to their contribution to the costs of the project.

The use of block voting to enhance a developer's advantage is not allowed under Spanish law. The law establishes that decisions must be made in accordance with the law and the regulations governing the Junta de Compensación. The interests of all members must be taken into account and any decision that unfairly favors one member over others can be challenged in court.

Furthermore, the Junta de Compensación must follow a set of rules and regulations set forth by the government, including a requirement to be transparent in their decision-making process, to have an open meeting format, and to offer appropriate and adequate information to their members.

In summary, the use of block votes to enhance a developer's advantage is not permitted in Spain, and the Junta de Compensación must adhere to strict legal requirements and take into account the interests of all members when making decisions.

We have seen the Developers using their BLOCK VOTING powers to force through decisions, budgets and initiatives which are against the interests of the homeowners.

Could the Junta de Compensacion Board and the Town Hall give us their commitment that the abuse of their Block Voting powers will cease?

**POINT OF ORDER 6  
TO CONFIRM THE VOTING MECHANISM FOR ELECTING HOMEOWNER REPRESENTATIVES**

The voting mechanism has resulted in Developers using their overwhelming block vote to select who they want to act as representatives of the Homeowners. This is considered to be an abuse of the Block Vote of the Developers which is illegal in Spain.

We contend that the land ownership voting mechanism is not applicable to the election of Homeowner representatives, as the Homeowner Representatives will in effect be chosen by the Developers who hold the overwhelming block vote, merely because they are owners of land which has not been urbanised.

We believe that:

1. **Homeowners** should be enabled to choose their own **Homeowner Representatives** on the basis of **'one Homeowner, one vote'**.
2. It does not matter how many homes you own. You will only be entitled to one vote because you are voting for a representative. No single homeowner should have more control over electing Homeowner Representatives for the community simply because they own more homes.

We wish to confirm that voting in of Homeowner Delegados will take place on a 'One Homeowner-One Vote' basis.

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Please include the following Agenda Items and accompanying Motions:

**AGENDA ITEM 1  
URBANISATION PLAN, BUDGET AND TIMESCALES**

The Developers will present their plan to complete the remaining urbanisation works in Cabrera in a time period no longer than the 24 months that the Developers committed to in November 1999.

The Developers will demonstrate how they will fund the completion of the Urbanisation and will confirm the amount of their Bank Guarantees which they will lodge with the Town Hall.

**AGENDA ITEM 2  
ILLEGAL OPERATION OF JUNTA DE COMPENSACION**

I formally notify the Junta Board that it continues to run the Junta de Compensacion illegally and to raise fee invoices to Homeowners on an illegal basis. This has been highlighted through various Court Actions over the past few years in the Administrative Court in Almeria.

The Junta Board must set out how it intends to run the Junta de Compensation in full compliance with the law.

**AGENDA ITEM 3  
ELECTION OF HOMEOWNER DELEGADOS**

**To resolve that:**

The election of Homeowner Delegados will take place on a 'One Homeowner-One Vote' basis. Only Homeowners will be able to decide who their delegates will be.

**AGENDA ITEM 4  
TO CONFIRM WHO PAYS TOWARDS AND MANAGES THE MAINTENANCE &  
CONSERVATION BUDGET**

If the JDC decides to revert to the 1993 Agreement way of working, this would mean that the Homeowners will pay the Maintenance & Conservation costs as before. As such, the Developers will avoid making any financial contribution to Maintenance & Conservation costs of the urbanisation works as required by the Proyecto de Compensacion and the law.

**This being the case, we propose a MOTION that the following takes place:**

1. Our elected Homeowner Delegados will take on the responsibility for determining and preparing the Maintenance & Conservation budget. The Developers are welcome to offer helpful advice and suggestions but, as they are not contributing towards the maintenance and conservation budget, they will hold no voting powers over the creation or use of the budget.
2. Homeowners alone have the right to elect their representatives.
3. Homeowners, alone, will have the right to determine the need and appointment of any employees and contractors to deliver the Conservation & Maintenance work.
4. Homeowners, alone, will determine the need for any 'Office Administration' functions and budget.
5. The Developers will need to provide their own administrative and legal services and fund it themselves.
6. Homeowners, alone, will oversee any employees that are required to deliver Maintenance & Conservation services.
7. The Developers should have no opposition or difficulty with these proposals as they, themselves, were insisting on the following in their communication dated 7 July 2022:

*The service company is an important part to comply with the now legal requirements.*

*Those volunteering should be able to organise and put in place a legally formed services organisation with its own budget, fund-raising system and prepare their own statutes to satisfy all property owners.*

*The required services to be managed are those that any urbanisation needs to exist, no different to the works the Junta has done for the past 30 years*

*The Junta will not be involved in the forming of Cabrera polygon 1 services system, which will require its own statutes, voting and meeting rules etc.*

The Developers were trying to insist that the Homeowners needed to take over the budgetary control and administration of the Maintenance & Conservation. This proposal does exactly that.

Importantly, the above proposal also means that the management of the Maintenance & Conservation will take place within the Junta de Compensacion system.

## **AGENDA ITEM 5**

### **TO CONFIRM WHO PAYS TOWARDS AND MANAGES THE INFRASTRUCTURE BUDGET**

If the JDC decides to revert to the 1993 Agreement way of working, this would mean that Developers will be responsible for completing the infrastructure at their own cost which is what they have promised the Homeowners for the past 30 years, but have failed to deliver.

El proyecto de Compensacion establecio los propietarios obligados a costear las obras de urbanizacion y que son según consta en el Proyecto de Operaciones Juridicas Complementarias al Proyecto de Compensacion del Poligono 1 los siguientes:

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The only reason for the existence of the Junta de Compensacion is to complete the infrastructure of Cabrera Poligono 1. The Junta de Compensacion is not supposed to be a Conservation & Maintenance organisation.

#### **This being the case, we propose a MOTION that the following takes place:**

The Developers must immediately lodge a Bank Guarantee with the Town Hall for the remaining cost to complete the infrastructure. The Developers need to pay for their own Bank Guarantee (AVAL payments) for the infrastructure completion. The misappropriation of funds from the Homeowner Maintenance & Conservation budget to pay Developer's costs (including AVAL) needs to cease.

The Developers need to submit their plan to complete the remaining urbanisation works in a reasonable timeframe, certainly no longer than the 24 months that the Developers committed to in November 1999. This fully costed and resourced plan to complete the urbanisation must be presented within 6 months of this AGM at the latest.

The Developers will need to provide their own administrative and legal services and fund it themselves. All accounting relating to infrastructure provision must be kept absolutely separate from the accounting related to Maintenance & Conservation and transacted through a separate Bank Account.

**AGENDA ITEM 6**

**TO INVOKE THE STATUTES CLAUSE THAT REQUIRES PUBLIC TENDERING TO TAKE PLACE**

To resolve that the approach in Rule 9 is adopted:

**Rule 9 - Carrying out the Works of Urbanisation: form of Engagement**

The works of urbanisation will be carried out by a suitable urbanising firm or contractor, by direct award of the Junta, according to the estimates contained in the Plan Parcial, to which these present Rules refer, and the urbanisation project which is approved, in its turn, in the development of the Compensation Plan.

However, when requested by owners representing at least 10% of the participating quotas, the contracts for the said works will be put out to public tender.



## **AGENDA ITEM 7 HOLDING OF AGMs**

The Statutes call for AGMs to be held twice a year. No AGM was held in 2021. No AGM is proposed to be held in 2023. The proposed EGM in April 2023 was cancelled 60 minutes prior to the meeting.

To **resolve** that AGMs are held in accordance with the Statutes:

### **Article 17 - Meetings**

The General Assembly will hold ordinary meetings twice a year and extraordinary meetings when the President of the Junta de Delegados deuders deems it necessary or when it be requested, in writing, by members representing at least 30% of the quotas of participation as defined in the rules of conduct, in which case the President must summon the extraordinary meeting requested within ten days following the request.

Ordinary meetings will be held twice a year, one during the first three months of each calendar year and the other during the last three months.

At these meetings, besides the matters announced by the President, the Junta de Delegados, or those members who hold 30% of the quotas of participation, the first matter to be dealt with, at the first meeting, will be the approval of the minutes and accounts for the previous year, and at the second, the estimate of expenses and investment for the following year, and the quotas to be paid during the same.

Note that there is a requirement to produce and approve the Accounts at the first meeting which should be held in the first 3 months of each year.

As of December 2023, the 2022 Accounts have not been published.

**AGENDA ITEM 8**  
**RECOVERY OF MISAPPROPRIATED INFRASTRUCTURE COSTS**

For many years, the Developers have passed on or attempted to pass on infrastructure costs to the Homeowners.

Some examples include €47,000 of cable ducts, Arch transformer upgrades €27,000, drainage and walls on privately owned land, annual AVAL bank guarantee payments, intentions to spend €250,000 of Homeowner money on two transformers when 6 transformers should have been provided by the Developers by November 2002 in terms of the Proyecto de Compensacion.

We propose the following Motion:

To **resolve** that:

- The Treasurer and President cease putting Infrastructure items into the Maintenance & Conservation budget and passing these Infrastructure costs onto the Homeowners.
- Access is given to the Homeowners to conduct a study together with the Town Hall of all the infrastructure costs that have been illegally imposed on the Homeowners.
- If it is demonstrated that infrastructure costs have been unfairly charged to the Homeowners, the Developers will be required to return this money to the Homeowners.