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**Neighbours' Meeting, 22 February 2014**

**Cármenes del Mar**

**Summary of statement of opinion:**

Below are excerpts from the matters discussed by the lawyer Hilario Aranda Espejo as an introduction to the meeting.

**Civil Proceedings**

The legal proceedings against the building and estate agents are about to conclude in the first instance court. A joint sentence is predictable, but the sentence, which will possibly be handed down before June, will be appealed before the Provincial Appellate Court of Granada and then appealed on point of law before the Supreme Court. A firm and enforceable judgment is not expected to be obtained until approximately six years' time. Meanwhile, the urbanisation is deteriorating and therefore other measures must be taken at the same time to continue the litigation.

**Other Judicial Proceedings.**

**1.- Claim against the Administration**. The aggrieved parties and Owners' Associations may file claims against the Administration (Autonomous and Local) under two headings:

a).- For their obligation to repair the urbanisation under the rules of subsidiary performance.

b).- For the Administration's liability for property damages, by failing to perform the repairs and actions in fulfilment of its repair obligations, thus losing the opportunity to correct the deficiencies and leading to the deterioration of the buildings.

The process is administrative in its first phase and then judicial in the contentious-administrative jurisdiction. The average time for obtaining an enforceable judgment is approximately 3 years.

**2.- Claim for Real Estate Fraud**. Under criminal law this action seeks the prosecution of criminal offences committed by individuals, which in this case would be real estate fraud and criminal insolvency, primarily against the directors of the company Cerro Gordo S.L. and Comarex in general, and against any other parties committing such offences.

First instance proceedings last an average of 2 years and the sentence would be handed down in about 3 years.

**3.- Declaration of bankruptcy and lifting the corporate veil**. Under commercial law, the company Cerro Gordo S.L. has filed for voluntary bankruptcy. It is advisable to appear in person at the bankruptcy hearings to challenge any irregular commercial transactions by asking for a declaration of "culpable" insolvency and pursuing the directors. It is also advisable to employ the procedural technique of lifting the corporate veil, in order to hold the Comarex business group responsible for the financial obligations of its member company Cerro Gordo S.L.

**4 °- Complaint to the General Prosecutor's Office**

There is already a prior complaint filed by an association of women from La Herradura - Almuñécar denouncing the existence of urban development irregularities. The Prosecutor's Office informed of the presence of these irregularities and even drafted a Resolution confirming the apparent existence of criminal actions, but urged the complainant Association to file the corresponding claim before the Courts. That Association has not filed this claim. We recommend filing a complaint for the apparent irregularities that have even led the work licenses to be cancelled at Los Altos, Balcón and Terrazas urbanisations.

We equally recommended non-judicial proceedings.

**Non-judicial proceedings.-**

Public opinion campaign

Media campaign.

Public demonstrations.

Protests

Political intervention at Local, Regional and National level

Request for Declaration of Emergency Area

Intervention of the Regional and State administration.

Fiscal disobedience and request for exemption from IBI property tax

Claim before the Bureau of the European Parliament.

Complaints at the owners' national embassies

Constitution of a Joint Residents’ Association ["*Mancomunidad de Vecinos*"] to facilitate joint actions.

Complaint to the Ombudsman.

Drafting of an Reparation Project by the Administration

**QUESTIONS BY NEIGHBOURS IN ATTENDANCE**

1.-Proposal of the non-payment of the IBI property tax as a protest against the action of the *Ayuntamiento*.

The Tax on Real Property [IBI - *Impuesto sobre Bienes Inmuebles*] is managed and collected by the Provincial Government, therefore its non-payment would not affect the *Ayuntamiento* directly and instead, the provincial Government would react by enforcing the unpaid bills. For this measure to be effective, exemption from payment of the IBI must be applied for in writing by each neighbour individually.

2.- It is necessary to change people involved and the criteria employed to resolve this issue. A negotiated solution is necessary; we will not get anything at the end of the proceedings.

Negotiations have not ceased since the first day, both with the Administration and with the defendants, but the results are not satisfactory and the solutions offered have been totally inadequate and unacceptable. The defendants have offered 2 million euros on the condition of dropping the claim and therefore that offer was rejected. In the opinion of Mr. Hilario, it seems possible that negotiations will resume after obtaining a judgement of conviction. The Administration should be pressured through public opinion (media, embassies, complaints, etc.) and politically.

3.- A letter is read from a resident of the Balcón urbanisation.

How much money are the owners of the houses willing to spend in pursuing a solution that does not seem feasible?

Answer: The damage at the Cármenes del Mar urbanisation affects all of the Owners' Associations, even those who have not suffered damage to their individual homes. They must be aware that general systems (roads, water and sanitation, electricity, etc.), belong to everyone, to all the neighbours in proportion to their ownership. The *Ayuntamiento* has not approved the handover of the urbanisation and therefore is not directly obliged to perform repairs. The developer (in bankruptcy) will not perform any repair work and the *Ayuntamiento* is obliged to do so in subsidiary execution but has not started the corresponding administrative process. In this situation, the solution conceived and proposed by many residents who have not suffered damage in their homes might be feasible if the *Ayuntamiento* or the *Junta de Andaluci*a were willing to solve it in this manner, but the *Ayuntamiento* is unwilling to evict and demolish the affected houses and stabilise the rest. No one can guarantee right now that the subsidence movements do not end up affecting all the urbanisations. On the contrary, the predictions of the technicians believe that the subsidence will move upwards, and in fact the urbanisations located in the upper areas are causing landslides and cracks with water seeping to the lower areas.

Neither is it viable to consider a solution that excludes the most affected urbanisation since the affected residents are not willing to lose their homes in order to consolidate the remaining urbanisations.

Do you agree with the constitution of a Conservation Body / Joint Association?

Hilario Aranda understands that a residents' coordinating body is essential to make decisions, whether it is a Joint Association or a simple Neighbourhood Association. The "Conservation Body" must be constituted at the request of the *Ayuntamiento* according to the Urban Planning Law of Andalusia, but so far the *Ayuntamiento* has not yet legally requested it.

Approximate budget of the Law Firm regarding the costs of the judicial proceedings:

Attached is a summary table of the estimated costs for the proposed legal proceedings.

