

REPORT REGARDING THE URBAN ENTITY OF CONSERVATION HACIENDA RIQUELME GOLF

RESORT, SECTOR ZU-SU-SN6

I. Concept of Urban Entity

The Royal Decree 3288/1978, 25th August, that approves the Regulation of Urban Planning for the involvement and application of the Law of the Urban Ordination created the judicial figure the Urban Entities of Conservation, mainly with the purpose that the Town Halls could give Urban Permissions for the construction of Resorts without having to afford the charges of the services (road cleaning, street lighting, garbage collection,...).

This Regulation establishes in section 67 that “the conservation of the Resort and the maintenance of the equipments and installations of the public services will be paid by the by the Administration.”.

However, the article 68 clarifies that:

“1.Nevertheless, the owners of the lands involved in the unity will be subject when this is established in the Planning Plan .

2. In this case, the owners will have to form an Urban Entity of Conservation.”

This part of the Law has been used by the Town Halls to authorise the construction of Resort without having to pay the maintenance. Lots of EUCCs exist in Spain.

The Urban Entities of Conservation (here in after the EUCC) have brought confusion due to the complexity and a management that has mixed elements of urban planning Law with other of horizontal property.

For this reason, we are going to clarify some aspects that are necessary to understand what an EUCC is:

a) The legal definition that the Urban Entity of Conservation has received is *“private association of legal composition with urban planning character”*. Given that this is a very abstract definition, we would complete adding that are entities that are formed in partial plans far from the urban city and that carry out municipal functions by delegation.

b) An EUCC **is not a Community of Owners**. It is an administrative entity that carry out functions that, in principal, the Town Hall should carry out.

c) An EUCC has the obligation to **keep the** works of urbanization and maintain the resources and installations of public services. They keep and maintain roads, green zones, street lighting, that do not belong to them and that belong to the Town Hall.

d) The EUCC are not regulated by the Law of Horizontal Property, but by other normatives and, specially, the *“Reglamento de Gestión Urbanística”*.

e) In occasions, it exists confusion and, even, **co-existence** of an EUCC and a Community of Owners.

f) The EUCC **should not** carry out the functions that are not of “urban planning” character. For this reason in some places is necessary to fund a community of owners or separate the public from the private.

➤ **The Statutes of the General Community and the relation with the Urban Entity “HACIENDA RIQUELME GOLF RESORT”.**

Before the existence of the EUCC, the Statutes of the General Community already established in its article 7 that:

“Consequently, the homeowners association shall assume the fulfilment of the said obligations and shall be obliged to maintain and conserve the furnishings and infrastructures listed in article 5 and following of these articles of association, even when they are not considered as common elements.”

Therefore, the Building Developer established in the Statutes that, independently of the fact that the Urban Entity is formed, the expenses should be assumed by the General Community.

III. The Urban Entity Hacienda Riquelme Golf Resort.

Analysing the situation in Hacienda Riquelme, Murcia Town Hall gave a planning permission to build a RESORT far from the urban city, but an Urban Entity should assume the functions and the expenses of the Town Hall.

The Statutes of the Entity were approved by Murcia Town Hall modifying the proposed and presented by the Building Developer “Hacienda Riquelme S.L”, being approved by the Meeting of Murcia Town Hall on 11th March 2009, and published on 16th March in the Official Gazette of Murcia (*“Boletín Oficial de la Región de Murcia”*).

On 7th July 2009, it was held the first meeting of the EUCC where it was stated the opposition to the Urban Entity of Conservation assumed the competences of conservation, administration and maintenance of: local roads, street lighting and garbage collections and it was decided that after a later study the expenses would be included in the Budget of the General Community with the purpose of avoiding dualities. As well, it was decided to appoint the representatives of the EUCC making them to coincide with the Presidents of Phase and it was considered that the owners were properly represented through the Presidents of Phase.

No more Assemblies were held and it continued working as a General Community applying art. 24 of the Law of Horizontal Property, due to that the Urbanization was not “receptionada”, it was not possible to work as an EUCC.

The Resort was “*recepionado*” in a definitive way by Murcia Town Hall on 21st December 2011, situation that the Community knew approx. in April 2012, after the holding of the AGMS; so, in a previous way, and after the advise of RESORTALIA, the General Community of Hacienda Riquelme and the EUCC contracted the Professor of Administrative Law in Alicante University, Mr. Santiago González Varas, to take a lawsuit (“*Recurso Contencioso Administrativo*”) to the Court against Murcia Town Hall challenging the partial definitive reception stating that there are big deficiencies to fix and challenging the article that established that the own Entity has to assume the cost of the street lighting.

III.1 Regulation and Normative

The Entity will be regulated by its own By-Laws, by the “*Texto Refundido de la Ley del Suelo de la Región de Murcia*” and by the “*Reglamento de Gestión Urbanística (arts. 24 a 30 y 60 a 67)*”.

Likewise, Murcia Town Hall will be the Supervisory Body (“*Órgano de Tutela*”).

III.2 Functions

The Statutes establish as functions of the Entity the conservation, administration and maintenance of the Resort and the conservation, administration and maintenance of:

- Local Roads
- Supply Network of potable water and irrigation
- Electricity of medium and high voltage
- Telephone network and telecommunications
- Gas
- Street Lightings and consumptions

NOTE: Part of these functions is judicially challenged through a claim against Murcia Town Hall that was submitted past 9th March 2012.

- Garbage Collection and drainage
- Free spaces and green spaces
- Casualty Insurance

Additional services: maintenance of the facades, security, maintenance of the private gardening and service of general medicine.

There are some excluded services: the services corresponding to the Municipal Police, Signposting and Direction of the Traffic and those corresponding to the Town Hall by Law.

III. 3 The Budget for the EUCC and its allocation.

The EUCC has as functions the conservation, administration and maintenance of the roads, water and irrigation supply, high and low tension electrical energy, gas, street lighting, phone and telecom net, Garbage Collection, free spaces and public green zones, public liability insurance and, in general, those with urban plan characteristics. Therefore, in the Budget of the General Community, there are several items that could be included in the budget of the EUCC, as: electricity, water supply for Town Hall zones, Gardening in the Town Hall Zones, garbage collection, and judicial expenses derived from the lawsuit against the Town Hall.

NUM	Concepto / Concept	Presupuesto 2012 <i>Budget 2012</i>
1	Jardinería zonas Ayto Gardening L. Authority Land	66.268,80 €
2	Consumo Agua Riego zonas Ayto Water from L. Authority Land	50.000,00 €
3	Electricidad Farolas & Estación de Bombeo Electricity Street & Perimeter lamps & Pump Station	35.000,00 €
4	Recogida de Basuras, Limpieza viaria, limpieza red alcantarillado Garbage Collection, Communal areas cleaning, sewers cleaning	238.850,48 €
5	Provisión Demanda contra el Ayuntamiento de Murcia Provision Claim against the Town Hall in Murcia	8.260,00 €
		398.379,28 €

The allocation for these expenses is established by the approved coefficients in the Statutes of the EUCC, which were approved on 11th March 2009, which are different of the General Community.

➤ **Participation in the EUCC**

a) **Participation of the phases in the EUCC compared with the participation in the General Community:**

LAND	PHASE	SURFACE	CUOTA GENERAL COMMUNITY	Surface to be built	Coefficient Art. 10	Corrected Building suitability	CUOTA EUCC	Comparison Surface/Suitability
R-6	1	66546,86	20,5	35970	1	35969,59	21,08	54,05%
R-5	2	58267,26	17,9	31767	1	31766,91	18,62	54,52%
R-2	3	29552,1	9,1	15202	1	15201,8	8,92	51,44%
R-1	4	34848,22	10,7	19652	1	19651,91	11,52	56,39%
R-3	5 ^a	23293,18	7,17	9837,2	1	9837,17	5,76	42,23%
R-4	5B	32166,98	9,9	17084	1	17084,2	10,01	53,11%
R-7	6	17251,67	5,31	8927,2	1	8927,18	5,23	51,75%
R-8	7	49651,4	15,3	27128	1	27127,63	15,9	54,64%
C-1	C1	13001,48	4,04	6500	0,5	3250	1,9	25,00%
C-2	C2	68,99	0,02	68,99	0,5	34,5	0,01	50,01%
C-3	C3	129,89	0,04	129,89	0,5	64,95	0,03	50,00%
C-4	C4	69,1	0,02	69,1	0,5	34,55	0,02	50,00%

Campo de Golf							1	
TOTAL				172334		168950,39	100	

As it can be checked, the modification of the parameter used for the calculation modifies the participation.

For the General Community, in Horizontal Property, the parameter used is the total surface of the Land that appears in the Title of New Deed.

The parameter used for calculating the participation in the EUCC is the corrected building suitability and, in the light of the columns **Surface / Buildability**, this produces changes in the participation of phases 3 and 6 and, above all, phase 5A, which it reduces.

It is necessary to remark that when the Deed mention "*Parcela*" (LANDS), it refers to the little entities that form the EUCC: Houses (grouped in phases), non built Lands, commercial and hotel, sport equipment and the Golf course.

The public equipments are not part of the EUCC.

The percentage of each Land (phase, lands, golf course,...) can be checked in the chart (page 5) in the column **CUOTA EUCC**. Such percentages have been approved by Murcia Town Hall.

b) Participation of the members of the Entity.

The participation of the members of the Entity in rights and obligations is the same but in the adopted agreements by the Assembly, the participation will be proportional to the percentages established in an appendix of the Statutes.

Likewise, the quotes of participation will establish the ordinary and extraordinary community fees.

➤ **GOVERNING BODIES**

All the members of the Urban Entity have the condition of Associated.

There are 2 governing bodies:

The General Assembly, that will hold a meeting once a year. The members will be represented by MEDIATORS, representatives of the Lands (phases, Lands,...) which form the EUCC.

The number of mediators (*“asociados compromisarios”*) will be 100 at the most, and shall be appointed by the members in accordance with the distribution in zones that are marked in the plan that approves the EUCC. The mediators that represent each zone will vote according to the percentage of cuota that represent. Each zone must document the appointment.

RESORTALIA advises to limit the number to 78, that would be the Presidents of the Subcommunities in Horizontal Property.

It is important to remark that all the associated owners, without exemption, are obliged to comply all the agreements legally adopted, without affecting, in the case, the appeals that could present against the agreements.

These 78 mediators would appoint amongst them:

Executive Board, is the Organ of direction, government, and administration of the Entity. It comprises five people being one of them the representative of the Administration performer in the Entity.

Inside the Executive Board, it will be elected the Presidency, Vice-Presidency and Secretary. The charges have a length of four years renewable by parts every two years.

Although that later we will concrete, RESORTALIA understands that is necessary to reduce the duration of the members of the Board and to assimilate with the Presidents of Phase.

For that reason, and in order to provide a higher functionality to this Executive Board and avoid duplicities, RESORTALIA considers that the most practical is that this Board is formed by 9 members: 8 owners (that would correspond with the Presidents of Phase in Horizontal Property) and the representative of the Administration.

The Executive Board will appoint, with the proposal of the President, a Manager. This is a paid charge with specific fields established in article 33 of the Statutes.

➤ **Regime of majorities**

The agreements will be adopted with simple majority of the cuotas of participation attending and represented. In the case of a tie, the President will have a quality vote.

For the adoption of agreements that mean the modification of the Statutes or the Internal Regime Rules and the dissolution of the Entity; it will be necessary a $\frac{2}{3}$ majority of the cuotas of participation having to notify Murcia Town Hall.

➤ **Debtors**

The way established in the Statutes to prosecute the debts is “procedimiento de apremio”, that is a proceeding where the Executive Board may require Murcia Town Hall to claim the debtor.

It is important to remark that in these Statutes, not as in others, is not regulated to use the civil proceeding: “*procedimiento monitorio*”.

In the current economical situation, the expectations of counting on Murcia Town Hall in the prosecution of the debts is very low, which it could suppose an increase in the percentage of debtors.

➤ **VAT**

It is of prime importance, to remind that the Bills that an EUCC issue are subject to the Spanish Value Added Tax, whose tax rate is now 21%. This Tax rate would have implications in the those services that are charged to the Entity in the reduced tax rate (Garbage Collection and a part in Water) of 10%, supposing an increase in the amounts to pay by the owners in a 11%, because the EUCC is obliged to charge VAT in 21%, although is charged to it in 10%, having to pay the difference to the Tax Authorities.

CONCLUSIONS

First.- Due to a “Recurso Contencioso Administrativo” (lawsuit against the Town Hall) has been submitted against the reception of the Resort by the Town Hall and taking into account the such reception is necessary for the EUCC to give services, we understand that an option to consider would be to delay the beginning of the functioning of the EUCC until the Court Rule regarding the lawsuit is got.

Second.- Nevertheless, and due to the difficult coordination between the working of a Complex with a General Community and an EUCC, we consider convenient to smooth the discrepancies out amongst both Systems with regard to the coefficients of participation, systems of appointments, number and duration of the members of the Board, procedures against debtors. The finality of these modifications is to make possible the governance of the Private Complex.

Third.- For that reason, we would propose, taking into advantage of he next AGMs of the Subcommunities, to modify the Statutes of the EUCC, modifying the structure for the Executive Board, being formed by the appointed Presidents of Phase, together with

the representatives of the commercial Lands, Town Hall and Golf Course, that would adopt the agreements according to the quotas of participation that represents.

It would be also proposed to limit the appointments to 1 year, putting the duration to the same level than the Presidents of Phase.

Fourth.- With regards to the fees, we will propose to add in the Statutes the obligation to pay by direct debit and quarterly and to include the payments in only bank receipt avoiding confusions and increase in the charges. We also propose to modify the Statutes to include the civil procedure (“procedimiento monitorio”) to collect the debt.

It is important to remark that in these cases, there are two debts. One to the Entity and other to the Subcommunity. Therefore, we are talking about 2 proceedings and 2 costs for the Community. Until the moment the Spanish Jurisprudence does not allow the to take both lawsuits together due to the legitimate parties are different: in a case, the Subcommunity and, in the other, the EUCC.

As measures of pressure for the payment of the debts, we would propose to prohibit expressly the vote for the debtors and would limit the access to several services.

Fifth.- In relation to the General Assembly, we would propose to call it the same day than the AGMS in order that the Presidents of Subcommunities could act as Mediators (ASOCIADOS COMPROMISARIOS) and appoint the Executive Board that has to be assimilated to the Committee of the General Community of the representative of Murcia Town Hall.

Sixth.- With regards to start working as an EUCC in allocation of expenses, we requested the opinion of the Solicitor of the Community, Mr. González Varas that answered: *“In our opinion, it would be convenient to wait until the resolution of the proceeding to start working as an Urban Entity of Conservation due to applying this before it could be against the interests of the Entity because we would be implicitly accepting that*

Murcia Town Hall has properly “repcionado” the Resort. Besides it would very hard, at this moment, to the determine of responsibility of the General Community and EUC, before knowing the municipal responsibility and of the private part.”

With regard to the judicial stage of the proceeding, he stated that *“The judicial stage where we are is the phase of contestación a la demanda (respond to he lawsuit), Murcia Town Hall has a deadline until 20th December to present the writing. Once this stage is over, a date will be set to the phase of proof and, after this and after the written phase of concussions, the Court will grant the Court Rule. Being a Court and not a “Sala” (other judicial entity) there will not presumably be a worrying delay. Nevertheless, we will give orders to the Procurador to try to speed up the proceeding.”*

This is our opinion based on Law, that we gladly leave to a higher opinion.

Should you require further information, please do not hesitate to contact us.

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(*) This is not and official translation but a document prepared by RESORTALIA SLP.

Kind regards.

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