

January 17, 2009

**Is the Del Mar Utility Undergrounding  
Assessment Fee Method Fair for the Sunset District?**

Don Smith and Bill Lewis

The State of California allows wide latitude in the selection of assessment methods, subject only to certain broad guidelines. Each admissible method must provide an assessment formula that is internally consistent and each method must be objective in terms of its subsequent application. But there are many different possible methods that are entirely admissible, so the selection of a particular method is a **subjective choice**. For example, the City of Solana Beach has selected a newer assessment fee method that is dramatically different from Del Mar's older method. And a municipality is allowed to use different methods for different districts. The selection of Del Mar's method for a given district is a subjective choice based on opinions regarding the advantages of one method over other competing methods.

According to the California Constitution (Article 13D, Assessment and Property Related Fee Reform), "*No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on the parcel.*" We argue here that the Del Mar method when applied to Del Mar's *Sunset District* is **not based on benefit** to the homeowner but rather it is effectively **based on the construction cost** which is not allowed by State law.

For purposes of utility undergrounding, the City of Del Mar separates the State-allowed costs for **special benefits** into two categories: improvements in **safety and reliability**, and improvements in **aesthetic view**. The total cost related to improved safety and reliability is divided equally and uniformly amongst all parcels with each parcel being assessed an identical fixed amount. Hence we denote these costs for improved safety and reliability as **fixed costs**, the same for each parcel. The total cost related to improved aesthetic view is divided amongst the parcels according to a formula which seeks to identify how the aesthetic view improvements differ from parcel to parcel. This amount will often vary from parcel to parcel, and we denote these costs for improved aesthetic view as **discretionary costs**.

The Solana Beach assessment method can also be described in terms of fixed costs (the same for all parcels) and discretionary costs (which will often vary from parcel to parcel), but the fixed and discretionary costs are computed quite differently in Solana Beach as compared to Del Mar.

The Del Mar method initially includes a formula that divides the total project cost into two parts, one part assigned to our fixed cost (improved safety and reliability) and the other part assigned to our discretionary cost (improved aesthetic view). For typical undergrounding districts in Del Mar, about  $48 \pm 2\%$  of the total project cost has been assigned to improvements for safety and reliability (fixed cost) and about  $52 \pm 2\%$  has been assigned to improvements in aesthetic view (discretionary cost). This seems fair, and Del Mar's handling of the fixed costs seems fair. However, for the *Sunset District* there is a profound flaw in the way the Del Mar method handles the discretionary costs associated with improved aesthetic views. This flaw is significant and substantial enough that it proves fatal to any claim of fairness when

applying the Del Mar method to our *Sunset District*. We agree that this is a **very difficult problem** and it is a *tricky matter* to devise a fair method for Del Mar's *Sunset District*.

To understand why and how Del Mar's method is flawed, it is useful to note that **Solana Beach has successfully handled this difficult problem** of computing fairly the *proportional special benefit* assigned to each parcel due to improved aesthetic view as a consequence of eliminating the power poles and placing the utility wires underground. Note that Solana Beach became involved in utility undergrounding relatively recently in 2006 compared to Del Mar's earlier involvement dating to 2002. Before devising their own method Solana Beach first chose to examine many different methods already being used by other California public agencies including Palm Desert, Rancho Mirage, Belvedere, Newport Beach, Laguna Beach, Manhattan Beach, **and Del Mar**. The methods of Del Mar and Laguna Beach seem to be the least effective at handling the discretionary (aesthetic view) costs for our *Sunset District*.

Solana Beach faced squarely the fact that **the removal of the poles and wires provides each and every parcel in a district with a substantial special benefit** based on the overall impact upon the ocean view and the overall general neighborhood appearance, **independent of any length of utility wire adjacent to a given parcel**. That is, Solana Beach recognized explicitly that all parcels, even those with **zero adjacent wire length**, obtain an aesthetic view *special benefit* as a result of the elimination of the poles and wires in a district.

Beyond this, the Solana Beach method also accounts fairly for the fact that some parcels gain additional special benefits compared to others due to improved aesthetic view, so the assessed discretionary

fees do indeed vary from parcel to parcel. But the overall variation in fees seems reasonable with the Solana Beach method, and the largest assessment fee for any parcel is typically less than about two times that of the smallest assessment fee for a parcel: *the range of fees is not excessive.*

By way of comparison, the Del Mar method seems unusually excessive in the sense that huge variations in fees occur with the larger assessment fees for some parcels being often as much as about 4 (or even 5 or 6) times that of the smaller assessment fees for other parcels. **And this isn't the worst of it!** The Del Mar method has the unfortunate feature that the parcels that are assessed the most often receive the least while parcels that are assessed the least often receive the most in the way of improved aesthetic view! So the Del Mar method is not only excessive but it unfortunately and unfairly **gets it backward** in the handling of discretionary costs. We analyzed a sample consisting of 49 contiguous lots in our *Sunset District*, and we found that there are numerous examples in our sample that illustrate the validity of these assertions, such as the following three case studies.

Our **Case Study A** compares two view lots, our Lot 32 which is a corner lot with a good ocean view, and Lot 39 which is a nearby pie shaped lot with a good ocean view. We numbered our 49 lots consecutively from 1 to 49 so as not to identify the street addresses. Both Lot 32 and Lot 39 are view lots, close together with almost the same ocean view. The Del Mar method assesses Lot 32 at approximately \$51,000 which is \$24,000 **over** the average, while the Solana Beach method assesses this same lot at about \$29,000 which is only \$2,000 above the average. For the other lot the Del Mar method assesses Lot 39 at approximately \$14,000 which is \$13,000 **below** the average, while the Solana Beach method assesses this lot at about \$29,000 which is \$2,000

above the average. So the Solana Beach method assesses these two nearby view lots about the same, a bit above the average fee, while the Del Mar method assesses one lot a fee that approaches 4 times that of the other lot. Solana Beach gets it right, while the Del Mar method is totally unfair.

Our **Case Study B** compares a view lot and a non-view lot, namely our Lot 14 which is a narrow lot with a great panoramic white water ocean view, interrupted by SDG&E poles and wires, and Lot 29 which is a corner lot with no ocean view and a very confined view of neighboring homes and SDG&E poles and wires. The Del Mar method assesses the view Lot 14 at approximately \$23,000 which is \$4,000 **below** the average, while the Solana Beach method assesses this lot at about \$34,000 which is \$7,000 above the average. For the non-view lot the Del Mar method assesses Lot 29 at approximately \$34,000 which is \$7,000 **above** the average, while the Solana Beach method assesses this lot at about \$23,000 which is \$4,000 below the average. The Del Mar formula is backward: the greatly improved panoramic view lot pays **less** than the average, while the non-view lot pays considerably **more** than the average. Again the Solana Beach methods gets it exactly right, while the Del Mar method is unreasonable and unfair.

Our **Case Study C** again compares view and non-view lots, in this case adjacent lots located approximately 50' apart. Lot 39 is the pie shaped view lot in Case Study A, and Lot 29 is the non-view lot in Case Study B. The Del Mar method assesses the view Lot 39 at approximately \$14,000 and the adjacent non-view Lot 29 at about \$34,000, with a difference of \$20,000 which is an **unfair advantage to the view lot**—that is the view lot **pays much less**. The Solana Beach method assesses the view lot at \$29,000 and the non-view lot at \$23,000 for a difference of \$6,000 which is a **fair advantage to the non-view lot**

which is charged less as would be fairly expected. Again, the Solana Beach method has the special benefits calculated fairly, while the Del Mar formula is unreasonable and unfair.

Our analysis shows that these case studies are not anomalous, but rather they illustrate a consistent pattern of the Del Mar method being both extreme and unfair.

Del Mar handles the discretionary costs quite differently than Solana Beach. Del Mar's formula for discretionary cost (improved aesthetic view) is based largely on adjacent wire length for each parcel, with almost no accounting for special benefits based on improvements due to the overall impact upon the ocean view and the overall general neighborhood appearance, independent of any length of utility wire adjacent to a given parcel. And for the *Sunset District* Del Mar's aesthetic view weighting factors play only a minor role with very little impact on the resulting assessed fees. Del Mar's method is dominated, for each parcel, by the frontage length of utility wire immediately adjacent to the parcel. This latter length is a cost-related quantity that is based on the greater cost for trenching in front of a parcel with a large street frontage length. This frontage length is not a surrogate for view, and the street-frontage length is generally not a factor in our real estate market for what people value in a property—people value good views, not street frontage. As already noted, there are beautiful hill properties in Del Mar's *Sunset District* with little street frontage for which undergrounding produces wonderfully improved views while Del Mar's assessment method charges such properties relatively little compared to other properties which have poor views but with large adjacent utility street frontage.

The Del Mar method is not well suited to the *Sunset District* because of topography and the prevalence of unusual geometries and irregular lot configurations in our district, including pie-shaped lots and other lots with small street frontage but nice ocean views. For such a district the Del Mar method produces parcel assessments with extremely wide variations that are unreasonable since they are not related fairly to improvements in aesthetic view special benefits.

Our study shows that the Del Mar method is **driven by construction costs** and **not by special benefits** per State Proposition 218. This is easily checked directly: one need only divide the overall project cost by the overall total project length of utility wire, to obtain the project **cost per linear foot** of wire. If one then applies this cost per linear foot to each parcel based on the number of adjacent wire feet for each parcel, one sees that **the overall results match almost perfectly** the results provided by Del Mar's assessment formula. That is, the actual construction cost per lot based on adjacent wire length, and the assessment fee per lot calculated by the Del Mar formula, follow the same track and are almost **identical**. This shows directly that the complicated Del Mar method is in fact largely **a cost-based method** (not allowed by State law), and for our *Sunset District* it fails to reflect fairly the proportional special benefits accruing to the various properties due to improved aesthetic view as a consequence of eliminating the power poles and placing the wires underground.

The Solana Beach method is much simpler than the Del Mar method, and the underlying rationale for the fairness of the Solana Beach method is easy to understand. For our *Sunset District* the Solana Beach method assigns the charges fairly based on proportional special benefits accruing to each parcel due to the overall impact upon the

ocean view and the overall general neighborhood appearance, independent of any length of utility wire adjacent to a given parcel. We have studied the original Del Mar method along with three other methods for our district, and we view the Solana Beach method as being a *gold standard* against which other methods can be judged.

It is a worthy goal to seek a simple and reasonable modification of the Del Mar method to obtain an improved or refined method that compares favorably with the Solana Beach method for our *Sunset District*. And indeed we have suggested an *ad hoc* modification to the Del Mar method which produces results similar to the Solana Beach method. Our refined Del Mar method requires no additional field work for its implementation and it provides an *ad hoc* “easy fix” for the flawed elements of the current Del Mar method. But due to the *ad hoc* nature of this fix, it is difficult to recommend this particular refined Del Mar method for our *Sunset District* compared to the Solana Beach method which is simpler and easier to understand and justify directly in terms of fairness.

We encourage the search for other refinements or modifications to the original Del Mar method which might be easy to understand and justify in terms of fairness for our *Sunset District*.