

COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 2

SEAN PATRICK MONETTE-SHAW,  
Plaintiff and Appellant,  
v.  
SAN FRANCISCO BOARD OF SUPERVISORS,  
Defendant and Respondent.

A110378  
San Francisco County No. 504777

FILED  
COURT OF APPEAL, FIRST APPELLATE DISTRICT

OCT 24 2005

DIANA HERBERT, CLERK

BY \_\_\_\_\_ DEPUTY CLERK

BY THE COURT:

Appellant's request for judicial notice is granted. The court will take judicial notice of the pleadings designated in the attached request, which is incorporated by reference.

Date: OCT 24 2005

KLINE, P. J.

P.J.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION TWO

SEAN PATRICK MONETTE-SHAW,

Civil No. A110378

Petitioner-Appellant,

-vs.-

(S.F. CPF 04-504777)

SAN FRANCISCO BOARD OF  
SUPERVISORS; GAVIN NEWSOM, Mayor  
of City and County of San Francisco; CITY  
AND COUNTY OF SAN FRANCISCO;  
SAN FRANCISCO HEALTH COMMISSION;  
and EDWARD HARRINGTON, Controller,

Respondents-Respondents.

---

From an April 4, 2005 final judgment of the San Francisco Superior Court  
Hon. James Warren, Presiding

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE**

Lynn S. Carman  
State Bar No. 028860  
28 Newport Landing Dr.  
Novato, California 94949  
Telephone: (415) 927-4023  
Facsimile: (415) 499-1687

Attorney for Appellant  
Sean Patrick Monette-Shaw

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE\]**

Petitioner Sean Patrick Monette-Shaw hereby requests that the Court take judicial notice of Resolution No. 05-05, adopted by the San Francisco Health Commission on March 29, 2005.

A true and correct copy of this Resolution No. 05-05 is attached labeled **Exhibit A.**

**Memorandum in Support of Request for Judicial Notice**

The Court may take judicial notice of this Resolution No. 05-05 of the San Francisco Health Commission under Evidence Code § 452(b).

The resolution is relevant for several reasons.

**First.** The Health Commission finds that Proposition A “stated that the City shall replace Laguna Honda.” and that the City Department of Public Works thereupon “designed a replacement facility” which “included 1200 beds located in four new buildings;” – which construction of Proposition A by this respondent supports the claim of the petitioner that Proposition A provided that the City shall construct a “replacement Laguna Honda Hospital” having, at the minimum, 1,200 beds.

**Second.** The Resolution also states (1) that the budget for the replacement facility is \$401.6 million, but that “market conditions have made it impossible to build a 1200 bed facility for this budget;” and (2) that DPW recommends that instead of the four buildings being built, with 1,200 beds, that **only two of the four buildings** be built, in order to stay within the \$401.6 million budget.

The Resolution thereupon resolves, – hence orders, – that DPW only proceed to construct the East and West Buildings of the replacement Laguna Hospital, until other “options” are brought forward by DPH.

The Resolution proves or tends to support the claim of the petitioner that the respondents have adopted a policy to reduce the size of the replacement Laguna

Honda Hospital to substantially less than the 1,200-bed size promised in Proposition by the device of **not using or considering use** of all available tobacco revenues (TSRs), in violation of Propostion A; – even though, as admitted by the City brief (at pages 5-6), the City is receiving “unexpectedly bountiful revenues from the tobacco lawsuit settlement on the order of 40% more TSRs than was expected, which could offset the escalation in construction bids so as to enable the replacement Laguna Honda Hospital to be built out to its promised 1,200-bed size, or at the least, to most of its promised 1,200-bed size..

Resolution No. 05-05 shows further, on its face, that the factor of use of all available TSRs was not considered by the Health Commission in issuing Resolution No. 05-05 to reduce the size of the replacement Laguna Honda Hospital to less than 1,200 beds, – in violation of the public trust imposed by Proposition A, which requires that the promised replacement Laguna Honda Hospital, of 1,200-bed size, not be abandoned without a finding, by the Board of Supervisors or an appropriate agency, based on evidence, that there are insufficient TSRs and Proposition A bond proceeds by which to construct a replacement Laguna Honda Hospital having at least 1,200 beds.

Dated: October 4, 2005

Respectfully submitted,

---

Attorney for Appellant

A

*Resolution: No. 05-05*

*Concurring with the Recommendation to Proceed with Construction at Laguna Honda Hospital and Requesting that the Department of Public Health Bring Forward Options for the Completion of the Facility as Soon as Possible*

WHEREAS, Proposition A passed by a 73% majority of San Francisco voters in November 1999; and

WHEREAS, Proposition A stated that the City shall replace Laguna Honda Hospital; and

WHEREAS, the City, through the Department of Public Works (DPW) as the contracting officer, designed a replacement facility; and

WHEREAS, this replacement facility included 1200 beds located in four new buildings; and

WHEREAS, the budget for said replacement facility is \$401.6M; and

WHEREAS, market conditions in the healthcare construction sector have made it impossible to build a 1200 bed facility for this budget; and

WHEREAS, DPW is of the opinion that market conditions will not improve in the near term; and

WHEREAS, DPW is furthermore of the opinion that there would be no gain in revisiting the design for further economies; and

WHEREAS, DPW has determined that the best course of action is to proceed with the bids received; and

WHEREAS, DPW has determined that proceeding with the South Building and the Link Building with no reductions in their scopes can be achieved within the budget; and

WHEREAS, DPW has determined that proceeding in this manner will allow for future construction of the East Building and the West Building; and

WHEREAS, proceeding in this manner also allows time to identify additional funding for completing the East and West Buildings; and

WHEREAS, the Commission supports such efforts to investigate options for completing the East and West Buildings; now, therefore, be it

RESOLVED, that the Health Commission of the City and County of San Francisco concurs with the Department of Public Works' recommendation to proceed with construction of the South and Link Buildings and any associated work with no scope reductions; and be it

FURTHER RESOLVED, that the Department of Public Health will bring forward, as soon as possible, options on completion of the replacement facility, for the Health Commission to consider.

I hereby certify that the foregoing resolution was approved by the Health Commission at its March 29, 2005 meeting.

Michele M. Seaton, Executive Secretary to the Health Commission



Any questions, comments, or suggestions pertaining to this site may be directed to the [DPH Webmaster](#)



Modified 10/04/2005 12:38:05  
© Copyright 1998 - 2005 Department of Public Health, City and County of San Francisco