



Beach Theatre
Foundation, Inc.

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April 5, 2011

Dr. Edward J. Mahaney Jr., Mayor
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Ms. Deanna Fiocca, Councilmember
Mr. William Murray, Councilmember
Ms. Terri L. Swain, Councilmember
City of Cape May
643 Washington Street
Cape May, New Jersey 08204

Re: Beach Theatre Historic Designation

Ladies and Gentlemen:

We are writing you one last time to urge adoption of the resolution passed by the Cape May City Historic Preservation Commission (HPC) and the Cape May City Planning Board (PB) designating the Beach Theatre as an historic site for purposes of the City's master list.

This is why we think you should act immediately and affirmatively on the matter.

1. ZBA Proceedings Flawed. The application to overturn the Construction Official's refusal to issue a demolition permit for the Beach Theatre may be concluded by the Zoning Board of Adjustment (ZBA) as early as Wednesday, April 6, 2011. The permit denial stems from a determination by the HPC that the premises were entitled to the protection of the ordinances regarding demolition of historic sites-- most importantly, the provision that requires the applicant to seek to dispose of the property for "fair market value" for up to 24 months before demolition will be allowed.

Up to this point, no fair market sales attempts have been made by the owner, Frank Investments. The option we obtained to purchase the premises for \$12.0 million in 2007 and our subsequent experience with developers through 2010 have confirmed that no possible redevelopment or restoration can take place on the basis of such an inflated and unrealistic price. Moreover, the ZBA, with no expertise or competence in historic preservation, has been conducting its

demolition hearings on a *de novo* basis, giving no deference to the expertise of the well developed HPC findings concerning the site. That procedure is a serious loophole in the review process for demolitions in the Historic District and makes it structurally flawed. We have been present at each of these hearings, and the lack of sophistication and interest at the ZBA for judgments of historic significance, as well as the exploitation of those factors by the owner, has been painfully obvious.

At this point, only the City Council can remedy the defect by confirming the designation urged on it by the two boards below—a request that has been pending with you since well before the ZBA process began. A Council designation would be conclusive fact that the site had been formally designated as historic and thus would take it out of the realm of determination by a body ill equipped to do so. A Council designation would complete the third step of a process leading to real efforts to sell the structure at a fair market price. The designation we seek does not involve a “taking” of the owner’s property—it merely causes it to be marketed fairly if the owner desires to demolish it.

2. Merits of Requested Designation. In making the request for designation, we point out the work done by the bodies below urging passage and also the record independently created in the ZBA as to the merits of the Beach Theatre as an historic site. Those merits include demonstrated fact, among other things, that it was designed by a prominent and prize winning theatre architect, and was built and maintained for the cultural and social benefit of the local community by the leading movie theatre and entertainment entrepreneur in Southern New Jersey in the early and mid 20th Century-- all parts of the city’s heritage worthy of designation.

Far from being the derelict shell vivisected by the Franks, the Beach Theatre was, and we believe can be restored to be, of impressive architectural significance. To confirm the worthiness of the designation urged on you, we enclose with this letter for your personal review materials introduced into the ZBA record, including (i) a slide presentation highlighting the historic persons and structure’s place in the community, (ii) the opinion/report of Professor Richard Longstreth, a prominent architectural historian, regarding the provenance of the Theatre, its architect and artistic merit (together with Professor Longstreth’s references), and (iii) a collection of historic articles from numerous print sources regarding the importance of the Theatre. We believe, without doubt, these materials corroborate the HPC’s actions leading up to the resolution and enabling you, with clear conscience, to designate the site.

3. Propriety of Requested Designation. We do not understand why the Council has not acted on the HPC and PB designation request before, but we do

note two factors. First, until May 2, 2011, when we have been advised the law in New Jersey will change to a “date of filing” from a “date of decision” basis (and provided the ZBA does not act in the interim), the City Council has the opportunity legally and effectively to adopt the PB resolution already submitted to you, which action must be given consideration in the ZBA proceedings. Thus, acting properly within your political responsibilities as a legislative body, you can make a difference in the outcome, whereas we, as private citizens, cannot be sure of doing so.

Second, we thought your hesitancy to pass the designation resolution might have stemmed from the City Solicitor’s advice that you risked being sued by Frank Investments for doing so. Despite that, as you know, although Council did not pass the designation resolution, last month, nevertheless, the City was sued by the Franks anyway on the prior demolition permit. So, if Council hoped to forestall litigation with the Franks over demolition of the Theatre, that objective is no longer achievable, and the City must defend itself. We think it should do so in court and in the legislative arena.

Our observation on this point is plain and simple—if the litigious Franks wish to sue the City over demolition, which obviously they have, what possible better response can there be to them than to enact, in the political sphere where you can make a difference, an historic designation for the Beach Theatre property that likely would moot their lawsuit. We think a designation, apart from the fact that it is fully merited, would counter the Franks’ legal action and ultimately save legal expenses for the City. To put it bluntly, it is time to stand up to the bully.

4. Landmark Status Issues. As you all know, the City’s “National Historic Landmark” status is under watch by the National Park Service (NPS). Review with negative implications can lead to loss of landmark status, bringing with it serious damage to a City economy that remains fragile from the recent recession. We believe, in view of other recent actions and developments, that, unless the City shows forceful continuing commitment to historic preservation, there is a very significant risk the NPS will revoke the landmark status. We can think of no better demonstration of such commitment than to take advantage of the expertise and the proofs offered to you to make the historic designation. By doing so, Council will set the example that demolitions of historic sites are not to be trivialized or won through loopholes. The NPS will see that, prior to demolition in Cape May, the City promotes transfers of historic properties to those who will pay fair value for preserving them. We think that demonstrates the kind of stewardship that the NPS will appreciate. We think it will preserve the landmark status.

We urge you to give the highest priority to adopting the resolution urged on you by the HPC and PB and ask you once again to designate the Beach Theatre as a historic site for the Cape May ordinances. We also urge Council to authorize the City Manager and Mayor forthwith to contact the Chair of the ZBA and request that its proceedings on the demolition permit sought by the Franks for the Theatre be stayed pending action by the Council prior to May 2, 2011.

Your action on this issue may be Cape May's last clear chance to save an important site and the City's landmark status. We beg of you not to let it slip away.

Very truly yours,

A handwritten signature in black ink that reads "Steve Jackson". The signature is written in a cursive style with a large, looping initial "S".

Steve Jackson
President & Founder
Beach Theatre Foundation, Inc.

cc: City Manager