



Beach Theatre
Foundation, Inc.

February 24, 2011

Members of the City Council
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Steve Jackson - President
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Ladies and Gentlemen:

Since 2007, our foundation has been leading the movement to save and restore Cape May's last remaining movie venue, the Beach Theatre. To achieve our goal, we have consistently supported findings concerning the historical importance of the Theatre premises. Thus, we wholly agree with the two City bodies, the Cape May Historic Preservation Commission (HPC), and Cape May Planning Board (PB), that have exercised their expertise and statutory responsibilities in passing, submitting and recommending for your approval resolutions designating the Beach Theatre as an historic site.

As you know, this nomination matter has been with you for a long time. To be precise, the first step was completed by the HPC on April 27, 2009, the second step was completed by the PB on October 14, 2009, and the matter was referred to you. Thus, it has been in Council's purview and subject to your legislative discretion for 16 months. Although we had urged you to act on this previously, we were profoundly disappointed to learn that you refused to do so publicly at your meeting of February 1, 2011. We were equally shocked to discover the rationale on which Council's refusal was based.

First, we think your refusal to so designate the Beach Theatre showed a lack of fortitude to do the right thing for the City and its residents in preserving and protecting our unique heritage. Most immediately, it means that if the current proceeding regarding the Theatre in front of the Cape May Zoning Board of Adjustment (ZBA) is lost, the Council will have a direct and material responsibility in contributing to the City's impending delisting from the National Historic Landmark registry on whose watch list it was recently placed by the National Park Service (NPS). The NPS action came about due to the City's perceived lack of rigor in preservation, which your refusal to act has now compounded. If that delisting occurs, and we think Council's inaction on the Beach Theatre makes it significantly more probable, the citizens of Cape May

The Beach Theatre
Foundation, Inc. is a 501(c)(3)
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should justifiably hold you responsible for the economic and other fallout that will follow. It took a generation to obtain and maintain the Landmark status, and this Council will bear the troublesome distinction of having lost it.

Second, since we are participating in the matter now in front of the ZBA, we know there is a significant body of evidence that, on the merits, would support the designation recommended by both the HPC and PB. All you have to do is examine that evidence to feel confident the HPC acted correctly. You may not realize the present appeal that brought about the current ZBA proceeding originated on July 22, 2010, fully nine months after the second step recommendation from the PB. Thus, despite the rationale advanced by the City Solicitor as reported in the press, in fact, it is not you who are interfering in a proceeding, rather it was a proceeding begun by an applicant that knew the designation process was two thirds completed that is interfering with your zoning discretion. For Frank Investments to proceed in its appeal was fully in the scope of the risk that you might act.

Third, the Council is a legislative body. It has had a proper proposal for legislative enactment presented to it that pre-dates an administrative proceeding ultimately reviewable in the courts. It simply is no excuse to refuse to act on legislation because you are concerned a prospective suit will ensue from a litigious applicant in the proceeding. Passing legislation entails the risk of litigation. If you believe the legislative action is correct, you need to be ready to defend it. We understand you received legal advice that may have influenced your determination not to act based on concern for the legal defensibility of your position. We and our counsel fundamentally disagree with advice that suggests you may be acting illegally, particularly since it has long been the law in New Jersey (and will remain so until May 2011) that Council is free to enact zoning-related modifications, such as a historic designation, at any time up to a board's decision-- without concern about when an application was filed.

To repeat, we think you should forthwith reverse your position and act affirmatively on the PB recommendation. Your action would mean two things to the benefit of the City. First, it would show determination to act on the right principles to preserve our landmark status, a factor we think would be influential with the National Park Service. And second, and equally important, historic designation will not deprive the applicant of property rights. Rather, at worst, it will just subject Frank Investments to an accepted statutory marketing process for the property, which, if a preservation-minded acquirer is not successful in purchasing it for a fair price, would still allow the owner to move on to demolition.

An improved and renovated Beach Theatre would not only be impressive evidence Cape May should come off the NPS watch list, it would also represent an attractive complement to the future financial viability of the City's new convention hall. All along, we have been striving to acquire and preserve the Beach Theatre simply for fair value. We think the City should use its tools to promote that objective, not frustrate it.

Sincerely yours,
Board of Trustees
Beach Theatre Foundation, Inc.