

1. This resolution is for the approval of a settlement of the litigation between Frank Investments and the City of Cape May pertaining to the demolition of the Beach Theater.

2. If approved, it will extend the time period for demolition through the end of this year.

3. The issues in this case have been thoroughly reviewed by Council and with authorization from Council we have been able to negotiate a Stipulation of Settlement that is acceptable to Frank Investments and the City.

4. Before the vote I would like to explain the factual background and reasoning for the settlement:

(a) In June 2007 the HPC approved a partial demolition of the Beach Theatre and the owners were informed that the Certificate of Appropriateness was only valid for one year.

(b) In September 2007 Frank agreed to lease the Beach Theatre to BTF for one year and confirmed that the demolition timeline was extended to November 2008 because of the moratorium on demolition between Memorial Day and Labor Day.

(c) In September 2008 Frank's attorney confirmed with City his understanding that PEA applied to a Certificate of Appropriateness for demolition,

and in reliance on that understanding Frank extended the lease with BTF for six months.

(d) In December of that year Frank received preliminary and final approvals from Planning Board for new construction on site of the Beach Theatre.

(e) In 2009 it was discovered that PEA did not apply to Cape May since it was listed on State Planning Map as Planning Area 5 (environmentally sensitive).

(f) Rather than to initiate a lawsuit against the City, Frank went back to HPC with the same application that was previously approved, but this time it was denied by a 4-3 vote.

(g) They appealed to the ZBA which has been conducting a hearing that has spanned several months and there is no clear indication as to when the hearing will end, and even when it does end, a further appeal to Superior Court is likely.

(h) It is clear in the HPC ordinance that all Certificates of Appropriateness are valid for two years and are subject to reasonable extensions as requested by the applicant, except for Certificates of Appropriateness for the demolition of historic buildings which are only valid for one year without a right to extend.

(i) The Beach Theatre is not an historic building under the HPC ordinance, and is not listed on the national or state register of historic sites and places.

(j) Frank Investments was never informed that they had two years to demolish the building and was never given the opportunity to ask for a reasonable extension, but was informed that it needed to submit a new application.

(k) Lastly, and as everyone is well aware, the Beach Theatre is located in the City's main beachfront business district along Beach Avenue directly across from the boardwalk area and promenade on which a new Convention Hall facility is currently being constructed, and today the City has awarded a contract for the final phase of the project. It has been vacant for three years, is in a state of disrepair and causing blight to the City's main beachfront business district.

5. With that background, the settlement of the litigation over the demolition of the Beach Theatre has been negotiated and a Stipulation of Settlement has been prepared for approval by Council.

6. It fully sets forth the terms and conditions of the settlement and the justification for it, which includes (and this is important) furthering the objectives of the HPC Ordinance by strengthening the City's economic base, stimulating tourism, fostering economic development and managing growth.

7. It will fully and completely resolve all outstanding issues pertaining to the lawsuit and will end the proceedings currently before the ZBA.

8. Most importantly, it will open the door for new development on the site that will compliment rather than detract from the new Convention Hall facility.

9. In closing, and assuming the settlement is approved, the matter is still a pending legal matter and thus should not be discussed by Council until such time that all applicable appeal periods have lapsed, at which time the closed session minutes will be made available.