



## Update on Pulse Museum

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**Board of County Commissioners Meeting**

**November 28, 2023**

*Roseann Harrington, Chief of Staff, Mayor's Office*  
*Whitney Evers, Senior Assistant County Attorney*



# Presentation Outline

- **Purpose of Discussion**
- **Background**
- **Pulse Museum TDT Funding Agreement**
- **Current Status**
- **Next Steps**



# Purpose of Discussion

To update the Board of County Commissioners on the Pulse Museum, the associated Tourist Development Tax (TDT) funding agreement and next steps.



Photo Credit: <https://floridayimby.com/2021/07/onepulse-foundation-inc-seeks-funding-for-nightclub-memorial-at-438-west-kaley-street-orlando-fl-32806.html>



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# Background

**June 12, 2016**

**Pulse Nightclub Tragedy**

**July 7, 2016**

**onePULSE Foundation, Inc. established and receives 501c3 IRS determination letter**

**September 21, 2018**

**Tourist Development Council approval of Pulse Museum funding of up to \$10 million from excess tourist development tax revenues for land acquisition and design fees.**

**October 30, 2018**

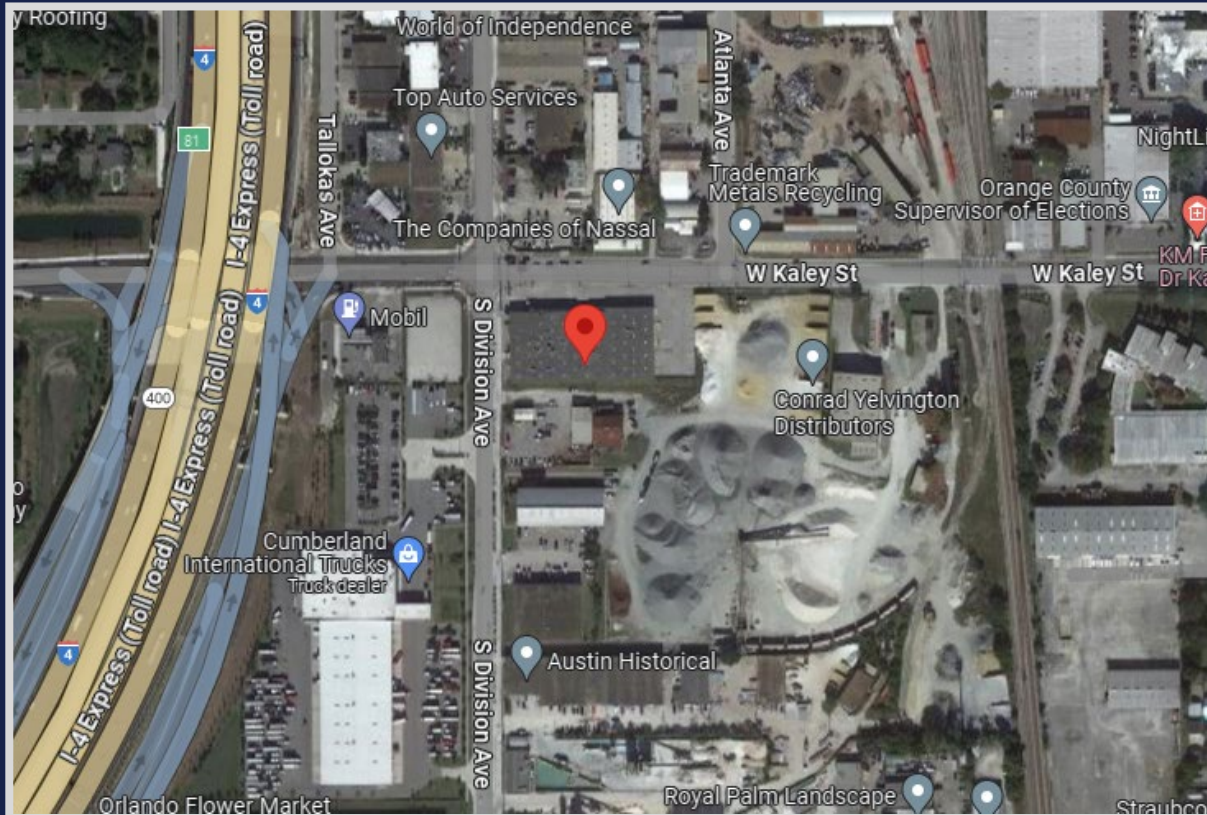
**Board of County Commissioners approval of Pulse Museum funding of up to \$10 million from excess tourist development tax revenues for land acquisition and design fees.**



# Background – Property Purchased

September 13, 2019

Foundation purchased a 1.7-acre parcel of land at 438 W. Kaley Street, Orlando for \$3.5 million.





# Background – State Grant

**October 29, 2019**

Foundation received a \$500,000 State of Florida, Department of State, Cultural Facilities Grant for the “Pulse National Memorial and Museum” to cover costs associated with constructing a museum. The agreement has been amended two times, on August 19, 2020, and again on May 18, 2023.

To date, approximately \$400,000 has been drawn from the grant.



# Design Requisitions – TDT Funding

October 30, 2019

Foundation announces winning design team for the National Pulse Memorial and Museum.



Photo Credit: National Pulse Memorial & Museum (image Coldefy & Associates with RDAI/onePULSE Foundation)

[https://onpulsefoundation.org/design-construction/coldefy-associates-with-rdai-xavier-veilhan-ducks-sceno-agence-ter-prof-laila-farah/?fbclid=IwAR1o434NotZRBurWdbaxdD-hvJhz\\_YZ9\\_JcjavbrTQSJwCAi\\_KHyFqEUIVw](https://onpulsefoundation.org/design-construction/coldefy-associates-with-rdai-xavier-veilhan-ducks-sceno-agence-ter-prof-laila-farah/?fbclid=IwAR1o434NotZRBurWdbaxdD-hvJhz_YZ9_JcjavbrTQSJwCAi_KHyFqEUIVw)





# Background – Notification to Orange County

**October 27, 2023**

Foundation notified the County they would not be able to proceed with constructing the museum.

To date, the Foundation has spent \$6,522,786 of the TDT funds on land acquisition and design fees.



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# Pulse Museum TDT Funding Agreement

## Funding Agreement Restrictions

- Funding to be used solely to pay the cost of acquisition of the museum property and for design costs for the museum (design costs capped at \$4.5 million, property acquisition at \$7 million). The Foundation was prohibited from using any part of the County Contribution on staff salaries, compensation, overhead or administrative costs.

## Funding Agreement Requirements

- Diligently proceed with fundraising efforts and the design, construction, and operation of the museum.
- Use the property solely as a museum open to the public as contemplated by Section 125.0104, Florida Statutes.
- Provide quarterly reports to County Administrator and Comptroller on compliance with Agreement, as well as fundraising, design, and construction.



# Pulse Museum TDT Funding Agreement

## **Foundation agreed to:**

- Audits and inspections by County and the Comptroller; use GAAP in its record keeping
- Indemnify the County for negligent acts or omissions of the Foundation
- Provide County and Comptroller with audited financial statements and IRS Form-990 filings

## **Restrictive Covenants to be placed on the property (recorded on September 13, 2019):**

- Use the property solely as a museum unless written consent from the County is obtained
- Complete construction of museum within 7 years
- Prohibited from selling, conveying, leasing, assigning, or transferring the property and from creating, placing, recording, or consenting to any liens, encumbrances, leases, agreements, etc. on the property, or buildings thereon, without the County's written consent
- If Foundation defaults on Restrictive Covenants for more than 90 days, County may demand the property be returned and avail itself of any other legal remedies



# Pulse Museum TDT Funding Agreement

## **The following constitute a default under the Agreement:**

- **Foundation's failure to comply with the Restrictive Covenants.**
- **If any material representation made by Foundation to induce disbursement of County Contribution is determined by County to be materially false, misleading, or incorrect.**
- **Foundation's default in performance of any material term or covenant of the Agreement for more than 30 days after notice from County.**
- **Dissolution, bankruptcy, or insolvency of the Foundation. Insolvency defined as the inability to pay debts as they become due and /or if the fair market value of assets does not exceed aggregate liabilities.**
- **Foundation loses its 501(c)(3) status.**
- **Foundation vacates or abandons the property.**



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# Current Status

**October 27, 2023**

Foundation informed County that it is not able to move forward with its plans to build the museum.

**October 30, 2023**

Foundation notified the State that it is unable to complete the museum and sought to terminate the State Grant Agreement. The State Restrictive Covenants require those funds to be used for a “cultural facility” or the funds must be repaid. That obligation is binding on successors and assigns and, if not resolved, could shift to County when Foundation conveys property.

**November 7, 2023**

County received copies of multiple License Agreements Foundation executed on the museum property without County consent.

**November 21, 2023**

County notified Foundation it is in default of the TDT funding agreement and required Foundation to terminate License Agreements within 60 days, to keep the property insured until it is conveyed back to County, and to provide copies of financial documents for the Foundation, as well as proof of TDT funds spent on design requisition costs and copies of all board meeting minutes.



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# Next Steps

## ❑ Review Foundation financials and board meeting minutes

### ▪ Lead – Comptroller

- Copies of bank statements with cancelled checks for all TDT funds received pursuant to the Design Cost Requisitions
- Most recent Statement of Activities and Statement of Financial Position, including the months ending September 30, 2023, October 31, 2023, and November 30, 2023 (when available)
- Copies of all board minutes for the years 2019 through and including 2023



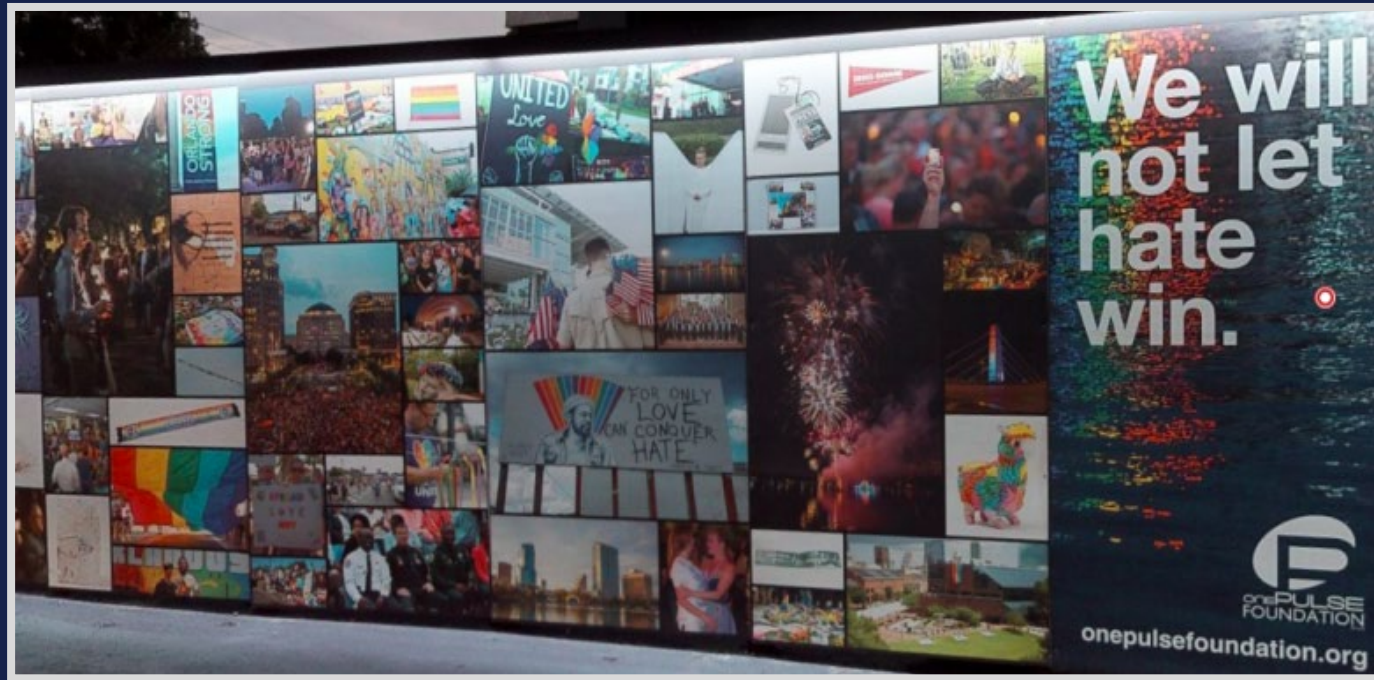
# Next Steps

- ❑ **Due diligence and physical inspection of the property at 438 W. Kaley Street**
  - **Lead – Real Estate Management**
    - **Support – Capital Projects, Risk Management, Facilities**
    - Title review
    - Appraisal
    - Environmental Site Assessment
    - Inspections



## Next Steps

- ❑ **Develop termination agreement memorializing terms and timing of conveyance of the property at 438 W. Kaley Street**
  - **Lead – County Attorney’s Office**
    - **Support – Real Estate Management**
    - **Draft termination agreement**
    - **Documents for conveyance of 438 W. Kaley Street**



# Questions



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