CITY OF DOVER

CITY COUNCIL - AGENDA

REVISED

Meeting Type:	**Special Meeting**
Meeting Location:	**McConnell Center, Room 306**
Meeting Date:	**Wednesday, August 5, 2015**
Meeting Time:	**To follow Workshop Session**

1. **CALL TO ORDER**

2. **MOMENT OF SILENCE**

3. **PLEDGE OF ALLEGIANCE**

4. **ROLL CALL ATTENDANCE**

5. **PUBLIC HEARINGS**

6. **CITIZEN'S FORUM**

   Citizens are invited to speak on the subject matter of the Special Meeting. Statements shall be limited to five minutes.

7. **UNFINISHED BUSINESS – None**

8. **NEW BUSINESS**

   A. APPOINTMENTS COMMITTEE REPORT

   B. RESOLUTIONS:

   1. **ACCEPTANCE OF DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DOVER AND VMD COMPANIES, LLC**
      (TO BE REFERRED TO A PUBLIC HEARING ON AUGUST 12, 2015)
      SPONSORED BY MAYOR WESTON BY REQUEST

   2. **ACCEPTANCE OF DEVELOPMENT AGREEMENT BETWEEN THE CITY OF DOVER AND KOSTIS ENTERPRISES**
      (TO BE REFERRED TO A PUBLIC HEARING ON AUGUST 12, 2015)
      SPONSORED BY MAYOR WESTON BY REQUEST

9. **ADJOURNMENT**

CITY OF DOVER - RESOLUTION

CITY OF DOVER

Agenda Item#: 8.B.1.

Resolution Number: **R – 2015.08.05 - 102**

Resolution Re: **Acceptance of Development Agreement Between the City of Dover and VMD Companies, LLC**

WHEREAS: The City of Dover is committed to ongoing development as part of its economic development goals and objectives in order to create a vibrant city; and

WHEREAS: VMD Companies, LLC, the owner of property located at Tax Map 11, Lot 2, consisting of 19 +/- acres in the area of Silver Street and the Spaulding Turnpike, is interested in redeveloping its property to the highest and best use, including the anticipated construction of a 75 unit assisted living facility; and

WHEREAS: City staff is negotiating a Development Agreement between VMD Companies, LLC and the City of Dover for the redevelopment of the property. The redevelopment of the property is projected to increase the assessed value of the land and building(s); and

WHEREAS: As a component of the development, VMD Companies, LLC will make improvements to neighboring roadways, including the design, construction, and installation of a roundabout at the intersection of Silver Street, the Spaulding Turnpike, and the entrance to the project site, (a project currently contained in the City's Capital Improvement Plan) for which the City shall reimburse VMD Companies, LLC up to $1,000,000.00 toward the commercially reasonable costs of said work upon issuance of the certificate of occupancy for anticipated assisted living facility; and

WHEREAS: The property will be redeveloped in a manner consistent with the City's Master Plan, and consistent with a pro-diverse economic development policy endorsed by the Dover Business and Industrial Development Authority and Planning Board.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL:

The City Manager is authorized to enter into a Development Agreement with VMD Companies, LLC related to development of the property along Silver Street and the Spaulding Turnpike, Tax Map 11, Lot 2, consistent with the attached Term Sheet and to sign documents to be recorded with the Registry of Deeds, including any deed(s) and/or easement(s), consistent with the terms of the Development Agreement.

REFER TO A PUBLIC HEARING

AUTHORIZATION

Approved as to Funding:	Daniel R. Lynch Finance Director	Sponsored by:	Mayor Karen Weston By request
Approved as to Legal Form and Compliance:	Anthony I. Blenkinsop General Legal Counsel		
Recorded by:	Karen Lavertu City Clerk		

CITY OF DOVER	CITY OF DOVER - RESOLUTION
	Agenda Item#: 8.B.1.
	Resolution Number: **R – 2015.08.05 - 102**
	Resolution Re: **Acceptance of Development Agreement Between the City of Dover and VMD Companies, LLC**

DOCUMENT HISTORY:

First Reading Date:	Public Hearing Date:
Approved Date:	Effective Date:

DOCUMENT ACTIONS:

VOTING RECORD Date of Vote:	YES	NO
Mayor, Karen Weston		
Deputy Mayor, Robert Carrier, At Large		
Councilor John O'Connor, Ward 1		
Councilor William Garrison, III, Ward 2		
Councilor Deborah Thibodeaux, Ward 3		
Councilor Dorothea Hooper, Ward 4		
Councilor Catherine Cheney, Ward 5		
Councilor Jason Gagnon, Ward 6		
Councilor, Anthony McManus, At Large		
Total Votes:		
Resolution does | does not pass.		

RESOLUTION BACKGROUND MATERIAL:

See attached Development Agreement Term Sheet.

Development Agreement Terms between City of Dover, New Hampshire ("City") and VMD Companies, LLC (the "Developer")

1. The Developer seeks develop the property known as Map 11, Lot 2, consisting of 19 acres, more or less, and which fronts along Silver Street and the Spaulding Turnpike (the "Project Site"). The first building to be developed on the Project Site is intended to be a 75 unit assisted living facility. A more detailed agreement will be signed by the parties with the terms set forth herein and additional terms as is customary in New Hampshire (the "Development Agreement").

2. The Developer will need to make certain improvements to the roads serving the Project Site, and the City will reimburse the Developer for some of the costs of those improvements, as follows:

    a. The City shall reimburse the Developer up to One Million Dollars ($1,000,000) toward the commercially reasonable costs expended by the Developer on the design, construction and installation of a roundabout at the intersection of Silver Street, the entrance of the Project Site and Spaulding Turnpike. The Developer's costs eligible for reimbursement also include the carrying costs for the letter of credit securing the payment of taxes in the first year following issuance of a certificate of occupancy for the assisted living facility or other comparable commercial building improvements for the Project Site (if the assisted living facility is not the first building constructed on the Project Site).
    b. The Developer shall not receive reimbursement until a Certificate of Occupancy has been issued for the 75-unit assisted living facility to be constructed on the Project Site.
    c. The parties have agreed to obligate themselves to this reimbursement arrangement for a five (5) year period. If the 75-unit assisted living facility on the Project Site is not developed in five (5) years, the parties can terminate their obligations or provide for additional time, depending on the circumstances at that time.
    d. Following issuance of a certificate of occupancy for the 75-unit assisted living facility for the Project Site, the Developer must guarantee a minimum assessed value for the Project, including the Project Site, which shall be established so that such value shall not be less than the amount needed to generate an annual tax payment equal to the following: The sum of the actual expense to the City to retire, over a five (5) year period, the bond issued by the City to provide funding for the Reimbursement, including interest at rates then applicable to the issued bond, plus its reasonable costs, expenses and fees related to the issuance and servicing of the bond (the "Guaranteed Assessed Value"). In the event that following the setting of the Guaranteed Assessed Value, the City discovers any other costs, expenses and fees ("Extra Costs") related to the issued bond which were not included in the calculation of the original Guaranteed Assessed Value figure or if the Guaranteed Assessed Value was set based on estimates of such Extra Costs that do not reflect the actual interest, costs, fees and expenses, the City may modify the Guaranteed Assessed Value, provided that such Extra Costs were not recklessly omitted from the first calculation of Guaranteed

Assessed Value. The Guaranteed Assessed Value adheres to the Project, including the Project Site for a period of seven (7) years. The actual value of the Project, including the Project Site, could be higher depending on the development by Developer. However, it will never fall below the Guaranteed Assessed Value, set forth above, during the 7 year period.

   e. While the Developer may seek an abatement because it believes the assessed value for the Project is too high, the Developer agrees that at during the 7-year period described above, the assessed value will not fall below the Guaranteed Assessed Value needed to retire the bond, as set forth above.

3. The Developer shall hold meetings with the abutters prior to the Planning Board approval, commencement of construction and the issuance of a building permit. These meetings shall be noticed to the City, and use the same abutter list generated for the site plan submission to the Planning Board. The Developer shall invite the City and provide a copy of the attendance list to the City upon completion of the meeting.

4. The City Manager shall obtain approval to execute a Development Agreement consistent with the terms and conditions in this term sheet. Any terms or conditions in the Development Agreement that represent changes or additions to the terms and conditions in this term sheet shall be subject to the consent and approval of the City, acting by and through its City Manager. Changes or additions considered material by the City Manager, in the City Manager's sole discretion, shall require approval by the City Council.

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CITY OF DOVER - RESOLUTION

CITY OF DOVER

Agenda Item#: 8.B.2.

Resolution Number: **R – 2015.08.05 – 103**

Resolution Re: **Acceptance of Development Agreement Between the City of Dover and Kostis Enterprises, LLC**

WHEREAS: The City of Dover is committed to development as part of its economic development goals and objectives in order to create a vibrant city; and

WHEREAS: Kostis Enterprises, LLC (also "Developer"), the developer and/or anticipated owner of property located at Tax Map 2, Lots 4, 5, 6, 6A, 7, 8, 8A, and 9, consisting of 1.15 acres +/- along Washington Street, Locust Street, and Chestnut Street, is interested in redeveloping the property to the highest and best use; and

WHEREAS: City staff is negotiating a Development Agreement between Kostis Enterprises, LLC and the City of Dover for the redevelopment of the property. The redevelopment of the property is projected to be valued at a minimum of $5,000,000.00 assessed value of the land and building, increasing to at least $8,000,000.00 over time; and

WHEREAS: Upon Planning Board approval of the development project, satisfaction of conditions precedent, and the passing of any relevant appeal periods, the City would convey the City Parking Lot, known as Map 2, Lots 2 and 3 to the Developer for $1.00; and

WHEREAS: The Developer would bear the costs to design and install improvements to the intersection of Chestnut Street and Washington Street, and make parking improvements along the Washington Street side of the project; and

WHEREAS: The Developer hopes to take advantage of the provisions of RSA 79-E, recently enacted by the City Council; and

WHEREAS: The property will be redeveloped in a manner consistent with the City's Master Plan, and consistent with a pro-diverse economic development policy endorsed by the Dover Business and Industrial Development Authority and Planning Board.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL:

The City Manager is authorized to enter into a Development Agreement with Kostis Enterprises, LLC related to development of the property along Washington Street, Locust Street, and Chestnut Street, Tax Map 2, Lots 4, 5, 6, 6A, 7, 8, 8A, and 9, consistent with the attached Term Sheet and to sign documents to be recorded with the Registry of Deeds, including any deed(s) and/or easement(s), consistent with the terms of the Development Agreement.

REFER TO A PUBLIC HEARING

CITY OF DOVER	**CITY OF DOVER - RESOLUTION** **Agenda Item#: 8.B.2.** Resolution Number: **R – 2015.08.05 – 103** Resolution Re: **Acceptance of Development Agreement Between the City of Dover and Kostis Enterprises, LLC**

AUTHORIZATION

Approved as to Funding:	Daniel R. Lynch Finance Director	Sponsored by:	Mayor Karen Weston By request
Approved as to Legal Form and Compliance:	Anthony I. Blenkinsop General Legal Counsel		
Recorded by:	Karen Lavertu City Clerk		

DOCUMENT HISTORY:

First Reading Date:	Public Hearing Date:
Approved Date:	Effective Date:

DOCUMENT ACTIONS:

VOTING RECORD Date of Vote:	YES	NO
Mayor, Karen Weston		
Deputy Mayor, Robert Carrier, At Large		
Councilor John O'Connor, Ward 1		
Councilor William Garrison, III, Ward 2		
Councilor Deborah Thibodeaux, Ward 3		
Councilor Dorothea Hooper, Ward 4		
Councilor Catherine Cheney, Ward 5		
Councilor Jason Gagnon, Ward 6		
Councilor, Anthony McManus, At Large		
Total Votes:		
Resolution does | does not pass.		

RESOLUTION BACKGROUND MATERIAL:

See attached Development Agreement Term Sheet and Site Plan.

TERM SHEET

The City of Dover, New Hampshire ("City") and Kostis Enterprises (the "Developer") (collectively the "Parties") intend to enter into a Development Agreement concerning the development of certain properties in Dover, New Hampshire that the Developer intends to purchase. This Term Sheet supplements and expands the agreements in place between the City and the current Owner of the relevant properties, as described herein.

1. The Developer seeks to develop the properties known as Map 2, Lots 4, 5, 6, 6A, 7, 8, 8A and 9, consisting of 1.15 acres, more or less, and which front along Washington Street between Locust Street and Chestnut Street (the "Project Site") in Dover, New Hampshire. The Developer intends to develop the Project Site in such a way that it is more likely than not that upon completion, the assessed value of the Project Site will meet or exceed the Guaranteed Tax Assessment Values described in section 7. A more detailed agreement will be signed by the Parties with the terms set forth herein and additional terms as may be necessary and/or customary (the "Development Agreement").

2. The City and the Developer agree that this Term Sheet supplements and expands agreements between the City and the Owner (RICHARD L. ROBBINS, STANLEY B. ROBBINS AND JUDTH E. WEISNER, Trustees of the SIDNEY ROBBINS FAMILY TRUST, a New Hampshire irrevocable trust and 104 WASHINGTON STREET LLC). The Owner's duties and rights to develop the Project Site will be transferred/assigned to the Developer pursuant to a purchase and sales agreement between the Developer and the Owner. Provisions from those agreements all continue in full force and effect, except as otherwise provided in the forthcoming Development Agreement. Those agreements and this Term Sheet shall be read in concert and interpreted, whenever possible, in accord so as to give full force and effect to their terms.

3. The Developer shall obtain final, unappealable site plan approval for the full build-out of the Project Site, including development of the City Parking Lots by June 30, 2016 If such site plan approval is not timely obtained, or if such approvals lapse for a period in excess of thirty (30) days, either party may terminate their obligations or the parties may provide for additional time, depending on the circumstances at that time.

4. In the event that the development of the Project Site is approved by the Dover Planning Board, all conditions precedent related to such approval have been satisfied, and all applicable appeal periods have expired, the City shall convey, by quitclaim deed, the parcels known as Map 2 lots 2 and 3 (the "City Parking Lots") to the Developer for $1.00.

   Following conveyance, the City shall continue to have the exclusive right to use the City Parking Lots for motor vehicle parking, at no cost to the City, until such time as the Developer commences construction on the City Parking Lots. The City shall plow and maintain the City Parking Lots and indemnify and hold harmless the Developer for any injuries, damages, losses, fees, expenses and costs for so long as it continues its use of the City Parking Lots.

5. The Developer shall bear the costs, as defined in 5 b ii below, incurred for design, construction (including any third party costs incurred by the City for construction management) and installation of the improvements for the intersection of Chestnut Street and Washington Street, as well as angled parking spaces on the Washington Street

side of the Project Site (the "Off Site Improvements"). The design and scope of the Off Site Improvements, and amount and location of property to be conveyed by Developer to the City, shall be mutually agreed upon by both Parties.

i. Prior to the signing of the Development Agreement, the Developer shall have its engineer design the Off Site Improvements to the satisfaction of the City Engineer. The City Engineer and the Developer's engineer shall determine the costs of the Off Site Improvements ("Off Site Improvement Costs") on or before September 30, 2015. If the Off Site Improvement Costs are acceptable to Developer in its sole discretion, then the Developer shall contribute a sum equal to one hundred fifteen percent (115%) of such cost (the "Contribution"), to the City within ninety (90) days of the final determination of such cost. Failure to timely provide the Contribution shall result in termination of the Development Agreement.

   If the Off Site Improvement Costs are unacceptable to the Developer, then Developer may terminate the Development Agreement.

b. Once the Contribution has been delivered to the City by the Developer, the City shall cause the commencement of construction of the Off Site Improvements, using said Contribution, by no later than one (1) year following the receipt of the Contribution, and shall cause the Off Site Improvements to be diligently completed. The City shall supervise the construction of the Off Site Improvements, and may employ third party construction managers, to assist with such supervision. The Developer shall not be responsible for any costs associated with the Off Site Improvements in excess of the Contribution, The City shall bear all costs in excess of the Contribution. If any portion of the Contribution remains following satisfactory completion and acceptance of such Off Site Improvements by the City, such portion shall be remitted to the Developer.

   i. No construction work on the Project Site shall be commenced until the entirety of the existing building on the Project Site is demolished and the City is conveyed all property required to accommodate the Off Site Improvements, including the land required to accommodate the Chestnut Street-Washington Street intersection improvements.

   ii. No Building Permit shall be issued for construction of a new structure on the Project Site, prior to the payment of the Contribution by the Developer.

c. The parking spaces shall be metered and managed as part of the City's parking management program.

6. The Developer shall hold meetings with the abutters prior to the Planning Board approval, commencement of construction and the issuance of a building permit. These meetings shall be noticed to the City, and use the same abutter list generated for the site plan submission to the Planning Board. The Developer shall invite the City and provide a copy of the attendance list to the City upon completion of the meeting.

7. As part of the development of the Project Site, the Developer desires to enter into a five year period where the taxes for the Project Site shall be set, as per New Hampshire RSA 79-E, at the assessed value for the Project Site in place at the time of the signing of this Term Sheet. The Dover City Council has enacted the provisions of RSA 79-E, and the Developer, at its election, may apply for such tax relief. Adoption of RSA 79-E by the City is not a guarantee that the City will grant the Developer such requested relief if the application fails to meet requirements under RSA 79-E. Any tax relief granted shall be consistent with and in compliance with RSA 79-E. If granted, the five year period shall commence upon the issuance of the first certificate of occupancy for any building to be developed on the Project Site; the parties agreeing that such certificate constitutes substantial completion of a replacement structure pursuant to RSA 79-E:5.

    a. Beginning with Tax Year 2022 (assessment as of April 1, 2021 and first payment due December 1, 2021), and through the Tax Year 2026, the minimum Guaranteed Tax Assessment Value for the Project Site shall be five million dollars ($5,000,0000). In Tax Year 2022 and each relevant tax year thereafter if the actual tax assessment is less than the Guaranteed Tax Assessment Value, the Developer shall owe and pay the tax shortfall to the City as if the Project Site was assessed at the Guaranteed Tax Assessment Value.

    b. Beginning with Tax Year 2027 (assessment as of April 1, 2026 and first payment due December 1, 2026), and through the Tax Year 2047, the minimum Guaranteed Tax Assessment Value for the Project Site shall be eight million dollars ($8,000,0000). In Tax Year 2027 and each relevant tax year thereafter if the actual tax assessment is less than the Guaranteed Tax Assessment Value, the Developer shall owe and pay the tax shortfall to the City as if the Project Site was assessed at the Guaranteed Tax Assessment Value.

    c. The parties acknowledge that upon issuance of certificates of occupancy for the improvements developed on the Project Site, the City will establish the actual assessment value of each respective improvement for which a certificate of occupancy is sought. If, during the period that the Guaranteed Tax Assessment Value for the Project Site is in place and the actual assessment value is less than the Guaranteed Tax Assessment Value, the actual assessment value of any of the improvements decreases by greater than twenty five percent (25%) in any five year period, as determined by the City pursuant to its periodic re-assessment of properties in the City, the parties agree to discuss whether and how to continue with the Developer's obligations to pay ad valorem taxes based on the Guaranteed Tax Assessment Value for the Project Site, but the City is not required to grant any such relief.

   The Guaranteed Tax Assessment Value obligations set forth above, shall replace those obligations pertaining to Guaranteed Assessed Value in Section 5.01 of the Development Agreement referenced above in Paragraph 2. This document will be an exhibit in the final agreement reached between the parties.

8. The Developer shall convey to the City a Performance Mortgage or other such surety satisfactory to the City, to secure the Developer's Guaranteed Tax Assessment obligations.

9. The City Manager shall obtain approval to execute a Development Agreement consistent with the terms and conditions in this term sheet. Any terms or conditions in the Development Agreement that represent changes or additions to the terms and conditions in this term sheet shall be subject to the consent and approval of the City, acting by and through its City Manager. Changes or additions considered material by the City Manager, in the City Manager's sole discretion, shall require approval by the City Council.