ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2012-02(c)

An Ordinance Authorizing Hughes Way to Be Replatted and Developed in a Manner That Does Not Meet the Current Minimum Subdivision Standards Required by the Land Use Code, and Authorizing Settlement of the Keikkala Living Trust Appeal.

WHEREAS, Hughes Way is part of an older subdivision that was platted before subdivision standards were adopted; and

WHEREAS, the platted right-of-way was never completely developed; and

WHEREAS, the owners of the five developed lots abutting Hughes Way (“the owners”) have for some time wanted to improve the platted and developed right-of-way access within the subdivision, but improving the right-of-way to meet current CBJ Title 49, Land Use Code subdivision standards is cost-prohibitive; and

WHEREAS, in 2009, the Planning Commission reviewed a neighborhood proposal to extend Hughes Way and issued a Notice of Recommendation (INQ2009-00061) recommending that the Assembly adopt a non-code ordinance allowing Hughes Way to be replatted as set out in the owners’ proposal and in a manner that did not meet minimum subdivision standards; and
WHEREAS, a dispute arose among the owners and the owners’ draft plat was never finalized nor a non-code ordinance pursued for introduction and adoption; and

WHEREAS, on October 3, 2011, the Planning Commission granted Conditional Use Permit (“CUP”) USE 2011-0010 to one of the five lot owners, the Keikkala Living Trust, to allow the establishment on its lot of two accessory apartments in two detached dwellings, on the condition that, among other things, the owner/applicant make certain improvements to Hughes Way; and

WHEREAS, by Notice of Appeal on October 24, 2011, the remaining four Hughes Way lot owners timely appealed the Planning Commission’s decision to grant CUP USE2011-0010. The permittee, Keikkala Living Trust, subsequently moved to intervene in the appeal and, at its regular meeting November 14, 2011, the Assembly accepted the appeal, decided to hear the appeal itself, and appointed Mayor Botelho as Presiding Officer on the appeal; and

WHEREAS, a prehearing conference was held December 16, 2011, in which a hearing date and deadlines were set and all parties, represented by counsel, agreed to participate in a mediation session on December 19, 2011, to attempt to settle the appeal, with the Presiding Officer serving as mediator; and

WHEREAS, as a result of the mediation session, the parties have executed the Settlement Agreement, included as Attachment A, the terms of which require certain Assembly action in order to be valid and effective; and
WHEREAS, under the Settlement Agreement, the parties have agreed to execute a plat of Hughes Way in substantially the same form that was earlier submitted to the Planning Commission, and as depicted in Exhibit 1 of Attachment A, with the addition of certain plat notes that provide for the future release of certain existing easements, that prohibit the subdivision or construction of additional dwelling units on the Keikkala Living Trust lot for a period of time, and that provide for a permanent 40-foot wide green belt on said lot; and

WHEREAS, the Settlement Agreement provides that the Kibbys and Keikkalas will each pay the City and Borough $25,000 towards the construction of the Hughes Way improvements depicted on Exhibit 1, with the City and Borough paying the balance, and that the obligations of the Settlement Agreement shall satisfy the requirements of CBJ 49.55.010, regarding guaranteeing the installation of improvements and financial responsibility; and

WHEREAS, the parties may wish to finance their contributions to the construction of Hughes Way through the Local Improvement District mechanism; and

WHEREAS, CBJ 15.10.290 - Capital improvements by agreement, allows the Assembly to authorize a Capital Improvement by agreement by ordinance; and

WHEREAS, the parties have agreed that the Settlement Agreement can and should serve to satisfy permit conditions 4, 5, and 6 of CUP USE2011-0010, regarding Hughes Way improvements and access; and

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WHEREAS, immediate compliance with USE2011-0010 condition 2, regarding water
meter installation, is difficult during the winter due to the need to work on
underground water lines to complete the meter installation; and

WHEREAS, action by the Assembly as the appeal agency, under CBJ 01.50.140, is
required to modify those conditions imposed by the Planning Commission; and

WHEREAS, the Settlement Agreement provides that upon the Assembly’s adoption
of the non-code ordinance relating to Hughes Way, the Appeal of CUP USE2011-0010
will be dismissed with prejudice, with each party to bear their own costs and attorney
fees; and

WHEREAS, the Settlement Agreement provides that it (the Agreement) shall be null
and void and no party bound to it unless the Assembly adopts a non-code ordinance
relating to Hughes Way (and the necessary monies are transferred) by February 15,
2012; and

WHEREAS, significant access improvements, including emergency vehicle access,
street maintenance access, and other vehicle access improvements, will be achieved by
the vacation of the platted cul-de-sac and the proposed extension of Hughes Way with
a relocated cul-de-sac, as depicted in Exhibit 1; and

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WHEREAS, Exhibit 1 depicts substantially the same proposed plat that was the subject of the Planning Commission’s Notice of Recommendation in 2009 without the referenced plat notes, and given the relatively few lots affected by the proposed plat, it is reasonable and appropriate for the proposed Hughes Way plat depicted in Exhibit 1 to be processed as a minor subdivision plat, under CBJ 49.15.420; and

WHEREAS, a non-code ordinance is appropriate in light of the unique circumstances presented, the neighborhood cooperation, and the outdated design of the existing subdivision; and

WHEREAS, adoption of this ordinance will benefit the City and Borough as a whole, as well as the neighborhood served by Hughes Way.

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a non-code ordinance.

Section 2. Notwithstanding any provision of CBJ Title 49 to the contrary, the existing Hughes Way right-of-way may be vacated to the extent necessary, and Hughes Way may be replatted as a minor subdivision and constructed, as generally depicted in Exhibit 1 of, and agreed to in, the attached Settlement Agreement, in a manner that does not meet all current CBJ Title 49, Land Use Code subdivision standards.
Section 3. The attached Settlement Agreement (Attachment A) shall be deemed an adequate financial guarantee of improvements pursuant to CBJ 49.55.010.

Section 4. The Manager is hereby authorized to construct the proposed roadway improvements to Hughes Way as generally depicted in Exhibit 1 of Attachment A. In accordance with 15.10.290, the Manager is authorized to contract with the property owners for payments for the Hughes Way roadway construction improvements.

Section 5. Conditional use permit USE2011-0010 conditions 4, 5, and 6, are deemed satisfied by execution of the above-referenced Settlement Agreement (Attachment A).

Section 6. The Manager is authorized to grant a Temporary Certificate of Occupancy prior to completion of USE2011-0010 condition 2, provided that the applicant provides a financial guarantee to ensure completion of condition 2 by June 1, 2012.

Section 7. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this day of 2012.

Bruce Botelho, Mayor

Attest:

Laurie J. Sica, Clerk