



Tucker County Subdivision and Land Development Ordinance

Tucker County Planning Commission
Tucker County, West Virginia

Effective _____ 2022

In accordance with West Virginia Code, § 8A-1-1, et seq., the Tucker County Commission and with the additional research, analysis, and recommendations of the Tucker County Planning Commission, finds that the best interests, health, and welfare of the people of Tucker County, West Virginia, require that it adopt a formal subdivision and land development ordinance.

Accordingly, after providing public notice, and holding public hearings and receiving public comment in accordance with West Virginia Code, § 8A-4-3, and after giving full and fair consideration to the information it has received, as well as the comments from the public, the Tucker County Commission does hereby adopt and enact the Subdivision and Land Development Ordinance for Tucker County, West Virginia, set forth below to govern and control subdivision and land development within the areas of the County outside of municipal boundaries. Provided, that to the extent any municipality within Tucker County should hereafter elect to adopt this ordinance by reference, pursuant to West Virginia Code, § 8A-4-1(b), the provisions hereof shall also be applicable to all future subdivision and land development within said municipalities.

Table of Contents

Article 1: Title and Effective Date	5
Article 2: Authority and Purpose	5
Article 3: Interpretations and Definitions	6
A. Interpretations	6
B. Definitions	7
Article 4: Governed by Ordinance	12
Article 5: Exemptions	12
A. Exemptions	12
B. Exemption Requirements for Roads, Septic, Water, Power and Undefined Subdivisions	13
C. Concealment of purpose and subterfuge:	13
Article 6: Minor Subdivisions and Land Development	14
Requirements for Water, Sewage and Power	14
Article 7: Major Subdivision and Land Development	14
A. Individual Phase Approval of Subdivision	14
B. Private Contracts or Agreements	14
C. Sources of Information	15
D. Access to Public Highway	15
E. Base Flood Plain Areas	15
F. Reviews	15
G. Road & Utility Rights-of-Way and Easements	15
H. Septic System Requirements	16
I. Performance Bond Process for Major Subdivisions	16
Article 8: Plat Requirements	16
A. The Preliminary Plat	17
B. Final Plat	17
1. The Final Plat must be prepared by a West Virginia registered professional engineer or a West Virginia licensed land surveyor using metes and bounds descriptions. Plat shall be sealed by a professional engineer to certify roads, grades, drainage, utilities, slope stability, foundation characteristics and suitability for development.	17
2. Three (3) copies of the Final Plat shall be submitted, and the Final Plat shall be on durable paper to best illustrate the subdivision at a large enough scale to clearly and accurately show all required detail and information. Scale used is subject to approval by the County Planner.	17
Article 9: Subdivision Standards	18

Article 10: General Standards for Roads	18
Article 11: Subdivision Accessibility Public Utilities	19
A. Water and/or Sewage	19
B. Electricity, Telephone and Internet Service	19
Article 12: Major Subdivision.....	19
A. Applications for a major subdivision or land development as defined in Articles 3,8,9,10,11,12,13,14 infra.	20
B. Informal Conference	21
Article 13: Application and Approval Process	21
A. Application for a Minor Subdivision or Land Development	21
B. Approval of Minor Subdivision or Land Development Plans and Plats	22
C. Recording of Minor Subdivision or Land Development Plats	22
D. Application for Major Subdivision or Land Development	22
E. Contents of a Major Subdivision or Land Development Plans and Plats	22
F. Approval of Major Subdivision	23
G. Recording of Major Subdivision or Land Development Plats	24
Article 14: Variance	24
Article 15: Appeal	25
A. Appeal Process	25
Article 16: Amendment.....	25
Article 17: Forms and Fees	25
Article 18: Violation and Enforcement.....	25
A. Violation	25
B. Penalty	26
Article 19: Validity, Conflict, Severability with other Laws	26
A. Validity	26
B. Conflict with Other Laws	27
C. Severability	27
Article 20: Fee Schedule	28
Application Exhibit 1	29

Article 1: Title and Effective Date

This Ordinance shall be known as the Tucker County Subdivision and Land Development Ordinance and its effective date is _____, 2022.

Article 2: Authority and Purpose

This Ordinance is adopted by the authority granted by West Virginia Code §8A, Article 4, Section 1, *et seq.* West Virginia Code, §8A-4-2 requires that every county which enacts a subdivision and land development ordinance must include certain mandatory provisions included below.

The following are the purposes for the ordinance:

- a. To protect and provide for the public health, safety, and general welfare of Tucker County.
- b. To manage community growth by promoting the orderly and efficient subdivision of land.
- c. To safeguard lives and property from loss by fire, flood, erosion.
- d. To protect the county and its citizens from developer undercapitalization and inadequate planning and construction.
- e. To protect and conserve the value of land throughout the County and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings.
- f. To coordinate existing streets, roads, and utilities with new streets, roads, and utilities.
- g. To establish minimum requirements for the design, construction, and maintenance of subdivision projects and to assure the development of uniform subdivision platting requirements and Procedures that will result in accurate land surveys and clear land titles.
- h. To prevent the pollution of air, streams, soil and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and management of natural resources throughout the County in order to preserve the integrity, stability, and natural beauty of the community.
- i. To protect the County, its citizens and lot owners within new or expended subdivisions by setting Minimum standards for the following:
 - (1). construction of new streets.
completion of infrastructure including the following: (a) supplying water; (b) collecting, treating, and discharging wastewater; (c) providing access to utility services for electricity, natural gas, and telephone; (d) providing access to broadband / internet communications.
 - (2). providing the necessary easements and rights of way for access and to supply the infrastructure to the lots within the development; and
 - (3). providing methods to ensure that the developer has adequate financing to complete the project.

Article 3: Interpretations and Definitions

A. Interpretations

For the purpose of this Ordinance, the following interpretations shall apply:

1. Words used in the present tense include the future tense.
2. Words used in the singular include the plural.
3. The term “will” means “shall” and both terms mean the task or obligation is to be construed as being mandatory.
4. The word "should" is an advisory term, not a mandatory one.
5. The word "building" or "structure" is construed as if followed by the phrase "or part thereof."
6. The word "Ordinance" refers to the Tucker County Subdivision and Land Development Ordinance.
7. Tucker County or "County" refers to Tucker County, West Virginia.
8. "Planning Commission" refers to the Tucker County Planning Commission.
9. "County Commission" refers to the Tucker County Commission.
10. The terms “landowner” and “property owner” are interchangeable and refer to the same thing.

B. Definitions

For the purpose of this Ordinance, the following definitions shall apply:

1. **Agent** – Any person, other than the sub-divider, who, acting for the sub-divider, submits to the Planning Commission plats for the purpose of obtaining approval thereof.
2. **Applicant** – Any person who submits to the Planning Commission subdivision plats for the purpose of obtaining approval thereof.
3. **Application, formal** – An application is formal at such time as the Planning Commission is assured that all plats, plans, and attendant documents are in proper form, content, and number required in accordance with these regulations. An application shall be considered a formal application unless the applicant is advised by the Planning Commission in writing within ten (10) days of any submission that such documents are not in proper form, content, or number.
4. **Base Flood** – A term used in the National Flood Insurance Program to indicate the minimum size flood to be used by a community as a basis for its floodplain management regulations; presently required by regulation to be that flood which has a one-percent chance of being equaled or exceeded in any given year. A base flood is also known as a 100-year flood or one-percent probability of exceedance flood.
5. **Base Floodplain** – That portion of the floodplain that would be inundated by a one-percent probability of exceedance (100-year) flood. The floodplain is defined by the Base Floodplain Elevation identified on FIRM maps.
6. **Bond** – A bond, also known as a performance bond, is an insurance policy required by Major Subdivision developers equal to 115% of the project infrastructure costs. Tucker County Commission shall be named as the beneficiary to be used only to correct substandard construction of project infrastructure.
7. **Campgrounds** – Commercial.
8. **Contiguous** – Adjoining tracts or parcels of real estate.
9. **Conveyance** – Transfer of real estate by Deed, Installment Sales Contract or the renting or leasing of real estate with the option to purchase.
10. **Covenant** – An agreement, restriction, or condition placed on a parcel of land which remains attached to the land and which entitles successive landowners to its benefits or to its obligations, as the case may be.
11. **Deed** – A signed written instrument delivered to a designated recipient, by which a person or entity transfers title to a parcel of real estate to another person or entity.
12. **Department of Health** – The West Virginia State Department of Health or its designee, the Tucker County Health Department.
13. **Developer** – Any person, individual, partnership, corporation, co-partnership, trust, limited liability

company, or other legal entity, (or an agent thereof) who (which) undertakes the responsibility for any or all of the activities covered by the provisions of this ordinance, particularly the drawing up of a subdivision or land development plat showing the layout of the land and the improvements involved thereon. Inasmuch as the subdivision or land development plat is merely the necessary means to the end of assuring a satisfactory development, the term "developer" includes the term "sub-divider", even though the personnel involved in successive stages of the project may vary. Depending upon the circumstances of its usage herein, a developer may or may not also be an "owner" as defined below in these definitions.

14. **Driveway** – vehicular access to a private property from a permitted roadway. A new driveway requires a Department of Highway entrance permit. Within this document, "driveway" is not a roadway.
15. **Easement** – A lawfully acquired right or privilege to use a parcel of land or a portion thereof for a specified purpose. An easement is retained by a person other than the owner of the land or parcel. Sometimes, the term is used interchangeably with the term, "right of way".
16. **Engineer** – Any person licensed to practice engineering in the State of West Virginia.
17. **Family Members** – The spouse or other partner of the landowner, children [both naturally born and adopted], stepchildren, parents, grandchildren, grandparents, brothers, sisters, uncles, aunts, nieces, and nephews.
18. **Farm** – Tract of land used for agricultural purposes including managed timber
19. **Governing Body** – Tucker County Commission
20. **Grade** – The slope of a road, street, or other public way expressed as a percentage. A seven (7) percent slope means a vertical drop of seven (7) feet for every one hundred (100) feet of horizontal measurement.
21. **Infrastructure** – Within this document refers to all deeded property development improvements including production and delivery of water service; collection, treatment and discharge of wastewater and sewage; distribution and delivery of electricity; natural gas; broadband; communication cables; construction of new streets and landscaping to prevent erosion and detrimental effects on water supplies and public roads.
22. **Infra** – Within this document, articles pertaining to either Minor or Major subdivisions and land development.
23. **Land Development** – Means the development of lots, tracts, or parcels of any means and for any purpose, but does not include easements, rights-of-way, or construction of private roads for extraction, harvesting or transporting of natural resources.
24. **Location Map** – A drawing at a reduced scale which shows legibly, by dimension and/or other means, enough area beyond the bounds of the proposed subdivision or land development to locate and orient the subdivision or land development in Tucker County and the relationship of the site to the community facilities which serve or influence the property, as required in this Ordinance.

25. **Major Subdivision** – A tract of land divided into six (6) or more individual parcels for the purpose of residential, commercial, and/or industrial use and /or development. Further detailed discussion about various components of a major subdivision, and standards applicable to a major subdivision are found in Articles 8,9,10,11,12,13,14 infra.
26. **Minor Subdivision** – A tract of land divided into five (5) or fewer parcels for the purpose of residential, commercial, and/or industrial use and/or development when such parcels are to be sold to the general public as opposed to being sold or transferred to family members of the owner of the tract of land. Further detailed discussion of the various components of a minor subdivision, and standards applicable to a minor subdivision are found in Articles 6,7, infra.
27. **Owner** – Any individual, firm, association, syndicate, co-partnership, corporation, cooperative, limited liability company, trust, or other legal entity having sufficient proprietary interest in land in this County (whether the land was acquired by deed, will, inheritance, lease, or otherwise) which is sought to be subdivided or developed, and who (which) is required to commence and maintain proceedings to subdivide or develop the same under the provisions of this Ordinance. The term “owner” may be used interchangeably with the phrase “property owner” or the phrase “landowner.”
28. **Person** – Any individual, firm, association, syndicate, partnership, co-partnership, corporation, cooperative, limited liability company, trust, or other legal entity.
29. **Planning Commission** – The Tucker County West Virginia, Planning Commission and referred to herein as the “Tucker County Planning Commission.”
30. **Planning Commission Staff** – All employees or agents of the Planning Commission whether part-time, full-time, contractual, or other.
31. **Plat** – A scaled, graphic drawing of a land subdivision project prepared according to the provisions of this Ordinance. A plat depicts the design and layout of a project as well as the location of existing and proposed property boundaries and easements. A plat also includes all terms, conditions and performance requirements established prior to the approval of a subdivision.
32. **Plat, Final** – The final map, drawing, or chart, and supplementary information, based upon the approved preliminary plat, in which the developer's plan is submitted to the Planning Commission for approval, and which, if approved, shall be recorded in the Office of the Clerk of the Tucker County Commission in accordance with Chapter 39, Article 1, Section 13, Code of West Virginia, 1931, as amended.
33. **Plat, Preliminary** – An informal map, drawing, or chart indicating existing features of a parcel or tract of land and its surroundings and the general layout of the proposed subdivision or land development unit for discussion purposes only and not to be presented for approval.
34. **Public Highway (Road)** – Any highway or road in Tucker County which is part of the Federal or West Virginia public highway system and which is so identified and numbered on the most recent General Highway Map published by the West Virginia Division of Highways.
35. **Right-of-Way** – A right that grants passage across or through a property. A right-of-way is also the

(usually dimensioned) path along which the right of passage is granted. The Right of Way shall at a minimum contain the road, shoulders, ditches, culverts, and up to 10 feet of the cuts and fills. This phrase is also sometimes used interchangeably with the term “easement”.

36. **Road** – A prepared surface within a right-of-way that is intended for vehicular use. A road does not include the shoulders located along the sides of a road.
37. **Septic System** – An individual sewer system with a daily design flow not to exceed one thousand (1,000) gallons per day with subsurface discharge or not to exceed six hundred (600) gallons per day design flow with surface discharge. The system is owned by, and maintenance is performed by a person or single entity. The phrase “septic system” when used herein contemplates that it shall be subject to all requirements by West Virginia Division of Health Legislative Rules Title 64, Series 9, and any amendments, revisions, and modifications thereto.
38. **Sewage Facility** – Any sewer, sewage system, sewage treatment works or part thereof, designed, intended, or constructed for the collection, treatment, or disposal of liquid waste including human and/or industrial waste.
39. **Shoulder** – A smooth graded, stabilized strip of land along the sides of a road. Shoulders permit vehicles to leave a road during emergencies; they contribute to carrying water away from a road to prevent erosion; and they also assist to provide safe visibility.
40. **Street** – A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway road, avenue, boulevard, lane, place, or however otherwise designated.
41. **Subdivide** – To divide a tract of land into separate deeded parcels.
42. **Sub-divider** – Any owner, developer, or agent commencing to affect the subdivision of land under the provisions of this Ordinance.
43. **Subdivision** – The partition or division of land into two (2) or more lots, tracts, parcels, or units for the purpose, whether immediate or future, of conveyance, building construction or land use. Subdivision applies to all forms of development, including residential, commercial & industrial.
44. **Surveyor** – Any person licensed to practice land surveying in the State of West Virginia.
45. **Travel way** – That area of road surface normally dedicated to vehicular traffic.
46. **Turnaround** – A circular area at the end of a dead-end road where vehicles are able to conveniently turn around without leaving the road. Also known as a cul-de-sac.
47. **Utility** – Shall be defined as including the electricity, telephone, cable television, public or central water and/or sewer, gas, internet, or broadband, etc.
48. **Variance** – A departure from the provisions of this Ordinance granted by the Planning Commission.

49. **Working Days** – Monday through Friday, not including holidays on which the office of the Clerk of the County Commission of Tucker County, West Virginia, is closed.

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Article 4: Governed by Ordinance

The provisions of this ordinance apply to and govern the development and conveyance of all real estate within the unincorporated areas Tucker County, unless exempted; and all Developers must comply with the terms of this ordinance prior to conveying any commercially developed real estate. This ordinance applies to subdivisions and land developments, and it provides protections and obligations in addition to those found in West Virginia Code, §36B [which governs condominiums, cooperative developments, and planned unit developments]. WV Code §8A has a requirement that “after approval of the subdivision or land development plat by the Planning Commission and before the subdivision or land development of the land begins, the subdivision and land development plat will be recorded in the office of the clerk of the county where a majority of the land to be developed lies” [§8A-4-2(a)(11)].

Article 5: Exemptions

A. Exemptions

The following types of land subdivisions and developments are generally exempt from this Ordinance, although most have minimal reporting and compliance requirements meeting existing state law and regulations:

- Family tracts and family farms divided among family members are exempt.
- Operation of farms producing agricultural crops and/or livestock.
- Extraction of coal, oil, gas, and other minerals (see Article 5-A-1).
- Division of land pursuant to a court order.
- Minor boundary adjustments between owners of contiguous parcels or tracts of land.
- Combining or merging two or more contiguous tracts or parcels of land into one larger tract or parcel of land.
- Emergency services facilities to provide ambulance, fire protection, and/or police services.
- Utility services. Utility lots or areas created for the purpose of facilitating metering or transmission of a legal utility such as gas, power, water and sewage, telephone, or broadband.
- Cemeteries.
- Division of a tract or parcel among joint owners, cotenants, and/or heirs and devisees inheriting such land by will or intestacy.
- Government, State and local property.
- Campgrounds.

However, the above exempt subdivisions and developments shall nonetheless still be governed by the requirements of existing law and regulations of the Health Department, the West Virginia Department of Highways, and the West Virginia Department of Environmental Protection. This shall include compliance with all requirements of obtaining highway entrance permits, approved water wells, and septic systems.

Additionally, the following provisions are nonetheless applicable to specific land developments covered among the exemptions listed above:

1. No surface resource extraction of coal, oil, natural gas, or other minerals may be conducted within a

radius of 1 mile from any subdivision. Underground mining and extraction for removal of coal or other minerals is permitted so long as the method of mining and extraction provides sufficient support of the overburden to protect above homes and subdivisions from subsidence. The underground extraction of oil and gas is permitted so long as adequate construction, maintenance, and operation of the drilling facilities, storage facilities, and removal methods used in the process are in place to ensure that no damage to, or contamination of, the wells and aquifers serving homes and subdivisions located on the surface area above.

2. Subdivisions of land created by the order of a court of record having general jurisdiction in Tucker County shall be exempt from the coverage of this Ordinance unless one purpose of the court order is to create a subdivision, which meets the definition of a major subdivision as defined herein. In that event, the provisions of this Ordinance shall apply.
 - a. For purposes of this Ordinance, utility services shall include any of the following: production and delivery of water service; collection, treatment and discharge of wastewater and sewage; distribution and delivery of electricity; distribution and delivery of natural gas; receipt and delivery of broadband and other internet service; delivery and distribution of telephone service; and delivery and distribution of cable television service.
 - b. For purposes of this Ordinance, utility services shall include any of the following: production and delivery of water service; collection, treatment and discharge of wastewater and sewage; distribution and delivery of electricity; distribution and delivery of natural gas; receipt and delivery of broadband and other internet service; delivery and distribution of telephone service; and delivery and distribution of cable television service.
 - c. All parcels created in an exempt subdivision shall have a feasible deeded right-of-way providing access and ingress to, and egress from, a public highway, that meets the requirements of Article 8.D of this ordinance.

B. Exemption Requirements for Roads, Septic, Water, Power and Undefined Subdivisions

The following applies to all Exemptions:

1. Health Department water, wastewater and public health and safety regulations. Any efforts to avoid such compliance shall nullify the Exempt status of the parcel and make the parcel of land subject to all requirements of the Ordinance.
2. All transfers that fall under the aforesaid exemptions does not exempt the individuals involved from any other county or state requirements.
3. All exempt subdivision lots shall have an approved septic site if lots are sold to the public.

C. Concealment of purpose and subterfuge:

However, should any landowner, developer, or agent attempt to conceal or subvert the actual or planned subdivision or development of a tract or parcel of land under the guise of one of the exempt classifications listed above, when the actual intention or plan is to create a major subdivision, the exclusionary language of this Article shall be inapplicable, and the subdivision shall be deemed a major subdivision. In that event full compliance with this Ordinance shall be required.

Article 6: Minor Subdivisions and Land Development

The following shall be eligible for consideration as a minor subdivision:

A tract of land divided into five (5) or fewer parcels for the purpose of residential, commercial, and/or industrial use and/or development when such parcels are to be sold to the general public as opposed to being sold or transferred to family members of the owner of the tract of land. Further detailed discussion of the various components of a minor subdivision, and standards applicable to a minor subdivision are found in Articles 6,7, infra.

Requirements for Water, Sewage and Power

The following applies to all Minor Subdivisions:

1. All subdivided lots and parcels formed, regardless of size, are subject to strict compliance with WV Health Department water, wastewater and public health and safety regulations and require WV Health Department Subdivision review and approval. Any efforts to avoid such compliance shall nullify the Minor Subdivision status of the parcel and make the parcel of land subject to all requirements of the Ordinance.
2. If public water and power are not provided to the subdivision lots, then a statement of such shall be added to the final plat and the application.

Article 7: Major Subdivision and Land Development

The following shall be eligible for consideration as a major subdivision:

A tract of land divided into six (6) or more individual parcels for the purpose of residential, commercial, and/or industrial use and /or development. Further detailed discussion about various components of a major subdivision, and standards applicable to a major subdivision are found in Articles 8,9,10,11,12,13,14 infra.

A. Individual Phase Approval of Subdivision

Review and approval of any phase or section of a subdivision does not constitute an intention or responsibility on the part of the Planning Commission to approve future sections of the subdivision. This provision shall apply regardless of improvements, expenditures, or efforts a developer may make (at his own risk) in anticipation of future approval by the Planning Commission.

B. Private Contracts or Agreements

Unless specified otherwise, approval of a subdivision by the Planning Commission bears no relation to any private easement, covenant, agreement, restriction, or condition accompanying said subdivision, nor is the responsibility of enforcing such private easement, covenant, agreement, restriction, or condition assumed by the County Commission or the Planning Commission.

C. Sources of Information

In order to permit a complete review and evaluation of subdivision proposals, the Planning Commission may request information from any individual or agency. Such requests may be made through correspondence, by telephone, or email at meetings conducted for that purpose. All information received shall become a part of the official record for the subdivision under consideration.

D. Access to Public Highway

The developer shall be responsible to provide each lot within the proposed subdivision access by deeded right-of-way and road that meets the standards for rights-of-way and roads hereunder. If feasible, the developer may be required to provide more than one access to a public highway for the subdivision. Any proposed subdivision that is not adjacent to a public highway shall be connected to a public highway by a deeded right-of-way and a road that meets the standards required for rights-of-way and roads within the proposed subdivision. Subdivision road entrances onto public roads must be acceptable to the Planning Commission and to the West Virginia Division of Highways, as to location, number of entrances, storm water drainage provisions, traffic safety and general design.

E. Base Flood Plain Areas

If a subdivision lot lies within a base flood plain area designated on the official Finn Maps prepared by the Federal Emergency Management Agency, copies of which are available in the County Planner's office and which it is the duty of a developer to examine, the developer shall provide each prospective purchaser of such a lot, before any commitment to purchase is made, a written statement saying the following:

"All or some of this real estate lies within an officially designated flood zone. The legal ramifications of this are significant and use of this land may be limited. Details may be obtained from the Tucker County Planning Commission. Reference shall also be made to the Tucker County Flood Plain Ordinance."

An identical provision shall appear or be referenced in every deed by which any such lot is conveyed, either by the developer or by a future owner.

F. Reviews

All subdivisions reviewed under this Ordinance are subject to announced or unannounced review by the authorized person acting on behalf of the Planning Commission, from the time of original application until the final permit has been issued and all work is satisfactorily completed.

G. Road & Utility Rights-of-Way and Easements

The width of a previously existing & deeded road right of way that will be utilized to support a subdivision shall not be less than thirty (30) feet in total width and must have been on record at the

County Clerk's Office prior to July 1, 2005. All newly proposed subdivision road rights of way must be at least forty (40) feet wide.

Additionally, a minimum of fifteen (15) feet wide utility rights-of-way must be provided adjacent to all lot lines and adjacent to road rights-of-way within the boundary of the subdivision. Unspecified width or prescribed rights of way shall not be considered to meet the requirements for acceptable rights of way. A right of way that specifies a road width that meets or exceeds the road and shoulder requirements of Article 9.3, 10, infra. of this Ordinance shall be considered to meet the requirements of the ordinance for acceptable rights of way.

H. Septic System Requirements

If the subdivision is not serviced by a public water supply or sewage system or an approved central collection and treatment system, a copy of the Tucker County Health Department Subdivision septic system pre- approval for each proposed lot in the subdivision shall be obtained and submitted. This subdivision pre-approval shall guarantee one suitable area to establish a residence, well and septic system, with reserve area within the boundaries of the lot. The size of the septic system shall meet the standards determined by the County Health Department. Each proposed lot shall be evaluated with a six (6) foot observation pit and percolation test, in accordance with State Health Department regulations. Should central sewage collection and treatment be available or proposed, then one copy of the approved state permits, and plans must be included with the application.

I. Performance Bond Process for Major Subdivisions

The owner/developer shall submit a written request for a performance bond approval from the Tucker County Commission for subdivision construction prior to final subdivision approval in order to pre-sale lots. An independent engineering firm of mutual choosing and at the cost of the owner/developer shall provide a cost estimate for the completion of the project to meet the Tucker County Subdivision Ordinance.

Based on the estimate, the owner/developer shall present a performance bond to the Planning Commission. The County Planner shall inspect and approve the construction to ensure compliance with this Ordinance and shall provide a letter releasing the bond after final inspection of the work. The County Planner may release sections of the construction to match sectional or phased developments.

When construction is completed, and the developer notifies the planning commission that the project is completed, the county planner shall inspect and approve the construction to ensure that it complies with this ordinance. If the county planner determines from such inspection that the project is completed and is in compliance with this Ordinance, the planner or planning commission shall provide a letter releasing the bond.

Article 8: Plat Requirements

Applications for a Major subdivision or land development as described in Article 3 of this document must include a preliminary and final Plat in accordance with this document.

A. The Preliminary Plat

The Preliminary Plat shall be submitted for review at the Pre-Application Conference; it must be on white paper and shall show in simple form the proposed layout of lots, parking areas, roads, building areas, water supply system, wastewater system and other features in relation to each other and to the tract boundary. The Preliminary Plat may be drafted free hand or computer generated.

The Preliminary Plat shall be accompanied by a Project Location Map utilizing a state county highway map.

B. Final Plat

1. The Final Plat must be prepared by a West Virginia registered professional engineer or a West Virginia licensed land surveyor using metes and bounds descriptions. Plat shall be sealed by a professional engineer to certify roads, grades, drainage, utilities, slope stability, foundation characteristics and suitability for development.
2. Three (3) copies of the Final Plat shall be submitted, and the Final Plat shall be on durable paper to best illustrate the subdivision at a large enough scale to clearly and accurately show all required detail and information. Scale used is subject to approval by the County Planner.

The Final Plat shall contain the following information:

- a. An insert vicinity map showing the location of the property in relation to state roads, geographical features, county districts, and other land held by the applicant in the area.
- b. The name of the subdivision.
- c. The names and addresses of the owners and developers of the subdivision.
- d. The exact layout for the subdivision, including, but not limited to:
 - i. Roads, streets and alleys or intersections and widths, including widths along the line of any intersecting streets; street names (names presently used in the County cannot be reused and require pre-approval by 911 regulations), boundary & lot line bearings and distances and all other data & references necessary to fully annotate the final plat.
 - ii. All easements or rights-of-way, when provided for or to be owned by public utilities, with the location of the easement or right of way definitively shown on the Plat.
 - iii. If an alternate water supply or septic system is required for a lot or lots within a given subdivision, this shall be stated and shown on the Final Plat.
- e. Lots numbered in numerical order, and blocks and sections lettered in alphabetical order or numbered in numerical order throughout the entire subdivision.
- f. Area for each lot.
- g. Accurate outline and survey of any area to be reserved or dedicated for common use by the

residents of the subdivision, or for the general public use with the purposes indicated thereon.

- h. A re-plat of an existing subdivision shall include the name of the existing subdivision and the place where it is recorded in the County Deed Books or Map Books. In the case of a re-plat of a subdivision of record, the Planning Commission may require that dotted, dashed, or colored lines be used to show features or locations to be abandoned and solid lines to show the currently proposed features or locations.
- i. Space for subdivision approval permit stamp.
- j. Any area within the subdivision designated by the Federal Emergency Management Agency as base floodplain areas, shall be shown, with the flood elevation if available, for each lot. If elevations are not available for each lot, show the extent of the 100-year flood plain within the property to be developed and on immediate adjoining property.

Article 9: Subdivision Standards

Subdivision Standards for a Major subdivision or land development as described in Article 3,8,9,10,11,12,13,14 infra. of this document.

- 1. No building or dwelling shall be closer than fifty (50) feet to the center line of the road fronting the lot. No single housing unit or other structure shall be within fifteen (15) feet of any other property or lot line or within fifty (50) feet of the parent tract exterior boundary.
- 2. Bonding: The Developer of a Major Subdivision shall provide a project performance and payment bond of a mutually agreed sum in the name of the Tucker County Commission, or an alternative method of security approved by the Tucker County Commission.
- 3. All roads must be accessible year-round by public transportation, school buses, emergency vehicles, service trucks and passenger vehicles. Reference is also made to Article 13, General Standards for Roads.
- 4. Water and Sewage: The Planning Commission encourages central or public service system, but individual wells and septic systems are acceptable, however, West Virginia Department of Health requirements must be met. Fencing is required for all sewage lagoons and treatment plants. Reference shall also be made to Article 15, Accessibility to Public Utilities, Water and Sewage.
- 5. Special provisions of construction of the entire subdivision, including all roads, parking and facilities in general connecting one type of land used with another, must provide a harmonious blend and flow between the various areas.

Article 10: General Standards for Roads

Minimum Road Design and Construction Requirements for a Major Subdivision as described in Article 3,8,9,10,11,12,13,14 infra.

1. Subdivision roads shall be coordinated with existing or proposed public roads. Subdivision road entrances and lot road entrances that border existing public roads must be approved by the West Virginia Division of Highways, as to location, number of entrances, storm drainage provisions, traffic safety and general design.
2. Subdivision road design shall have a reasonable relationship to tract topography in order to minimize earthwork and erosion, ensure reasonable grades, and produce useable lots.
3. Subdivision road design should minimize through traffic.
4. All roads shall have at least a sixteen (16) foot wide travel way surface; exclusive of parking areas, plus two (2) foot minimum width shoulders on each side. All roads shall be built within the minimum required road right of way width.
5. Recommendations of Manual on Uniform Traffic Control devices (MUTCD) shall be followed.
6. All subdivision roads including the main entrance road shall be clearly identified by permanent road signs. A subdivision identification sign at the main entrance shall identify the name of the subdivision. The subdivision sign shall not be less than 2 feet x 3 feet in size and made of all-weather material.
7. All stumps, downed trees and other debris which has been displaced and accumulated as a result of road, ditch, and other construction, shall be properly disposed of by the Developer, through such approved means as burning, burying or suitably removed from the property.

Article 11: Subdivision Accessibility Public Utilities

Applications for a Major subdivision or land development as described in Article 3,7,8,9,10,11 infra. of this document.

A. Water and/or Sewage

If access to public water and/or sewage is available and the developer elects to utilize these services, the developer must obtain necessary approvals and install all pipelines and appurtenances as required, through the development to provide each lot with public water and/or sewage, at developer's expense, prior to the approval and conveyance of such lots, as required by the servicing Public Service District Regulations.

B. Electricity, Telephone and Internet Service

It is the responsibility of the subdivision developer to provide electricity, telephone, and internet service drops for each lot in the subdivision. If cable television/broadband is available, and the developer desires to provide service, it is the responsibility of the subdivision developer to provide cable television/broadband service readily available to each lot.

Article 12: Major Subdivision

A. Applications for a major subdivision or land development as defined in Articles 3,8,9,10,11,12,13,14 infra.

1. A land development plan and plat shall meet and satisfy the general and the specific provisions set forth in this subdivision and land development ordinance as described in Article 3.
2. In addition to those provisions, the subdivision or land development plan and plat shall provide the following, as applicable:
 - a) Include a method of payment to cover the cost of the water and sewer service infrastructure, which can include, but is not limited to, bonds, impact fees, escrow fees and proffers.
 - b) Include provision for coordination among land development with adjoining landowners, including, but not limited to, facilities and streets.
 - c) Include provision for the distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience, and the harmonious development of the county.
 - d) Include information to establish that there is a fair allocation of areas for different uses, including, but not limited to, streets, parks, schools, public and private buildings, utilities, businesses, and industry, if applicable.
 - e) Show that there is a water and sewer supply.
 - f) Provide for setback and lot size measures within the subdivision and land development plan.
 - g) Include the standards used for designating land, which is subject to flooding or subsidence, details for making it safe, or information showing that such land will be set aside for use, which will not endanger life or property and will not further aggravate or increase the existing menace.
 - h) Disclose the control measures for drainage, erosion, and sediment.
 - i) In addition to what is required elsewhere in this ordinance, provide a description of the coordination of streets, sidewalks, and pedestrian pathways in and bordering the land development, including a letter from the Division of Highways stating that the plan provides sufficient access to state roads.
 - j) Provide a description of the design, construction, and improvement measures to be used for the streets, sidewalks, easements, rights-of-way, drainage, utilities, walkways, curbs, gutters, streetlights, fire hydrants, water, and wastewater facilities, and other improvements installed, including the width, grade, and location for the purpose of accommodating prospective traffic, customers and facilitating fire protection.
 - k) The developer shall provide a quantifiable description of how the planned development will affect county infrastructure. The developer shall provide an estimate quantifying the demands of the development on the county's water resources such as water, sewage, and storm drainage. The developer shall also provide energy estimates such as electrical usage and natural gas usage (if applicable). The developer shall provide quantifiable estimates of the development's solid waste requirements. The contactor shall estimate the development's telecommunications and internet requirements including how such telecommunications infrastructure will impact the county. The developer shall provide estimates of how the projected new development will affect traffic flow, snow removal, and road use within the county. The developer shall also estimate how the development will affect human resource services provided by the county. These human resource requirements shall include but not be limited to law enforcement, emergency services, and medical services.

B. Informal Conference

Applications for major subdivisions or developments will be available in the Office of the County Planner. The Owner must declare on the application that lots will be sold to the public. Prior to formal application of a major subdivision a developer shall request an informal meeting with the Planning Commission or County Planner for the purpose of the Planning Commission or Planner giving guidance as to how to obtain approval for the subdivision or land development under this Ordinance. The developer shall bring to this meeting a preliminary plat of the subdivision, a geotechnical report, the intended method of supplying water and sewage disposal, an approximate number and size of lots, the approximate location and size of streets and approximate access roads, land to be held in common, provisions for utilities, existing and proposed drainage of surface water and proposed method of road maintenance. The developer shall also provide information of the projected impact on the development on the community including impacts to community water systems, sewer systems, transportation systems, electrical systems, and communications systems.

Article 13: Application and Approval Process

Pursuant to West Virginia Code, 8A-5-1(a) the Tucker County Planning Commission is given the authority to:

- Approve a minor subdivision or land development application.
- Approve a major subdivision or land development application.

Additionally, the staff of a planning commission is specifically authorized hereunder to approve a minor subdivision or land development application within its jurisdiction. If a subdivision or land development plan and plat cannot be approved through the minor subdivision or land development process, then an applicant must use the major subdivision or land development approval process as provided in West Virginia Code, 8A-5-1(c).

A. Application for a Minor Subdivision or Land Development

Applications for minor subdivisions shall be available in the Office of the County Commission. The Owner or Developer must declare on the application that lots will be sold to the public. An application for approval of a subdivision or land development plan and plat may be considered a minor subdivision or land development if it meets the following requirements:

1. Only creates the maximum number of individually deeded lots, five (5) or less, specifically permitted by this subdivision and land development ordinance for a minor subdivision or land development, Article 3.
2. Such other requirements as are provided within this ordinance to ensure that required improvements are installed and not avoided by a series of minor subdivisions or land developments.
3. An applicant shall submit a copy of a land development plat to the planning commission.
4. Within seven days after the submission of the subdivision or land development plat, the applicant and the staff of the planning commission shall meet to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor.
5. The staff or authorized representative of the planning commission may make a site inspection of the proposed subdivision or land development.

6. Within ten days after the submission of the subdivision or land development plat, the staff of the planning commission shall notify the applicant in writing that the proposed subdivision or land development has been classified a minor subdivision or land development.

B. Approval of Minor Subdivision or Land Development Plans and Plats

1. Within ten days after a plat has been classified a minor subdivision or land development according to Article 3 of this document, then the planning commission or its authorized representative shall approve or deny the plat.
2. If the planning commission approves the plat, then the planning commission shall affix its seal on the plat.
3. If the planning commission approves the plat with conditions, then the planning commission must state the conditions.
4. If the planning commission denies the plat, then the planning commission shall notify the applicant in writing of the reasons for the denial.

C. Recording of Minor Subdivision or Land Development Plats

After approval of a minor subdivision or land development plat by the planning commission and before the subdivision or development is commenced, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located.

D. Application for Major Subdivision or Land Development

1. An applicant for approval of a major subdivision or land development plan and plat shall submit the planning commission written application, a copy of the proposed land development plan, plat, and pay the fees for such submission set forth in Article 20.
2. Within forty-five days after receipt of the application, the planning commission shall review the application for completeness and either accept or deny it.
3. If the application is not complete, then the planning commission may deny the application and must notify the applicant in writing stating the reasons for the denial.

E. Contents of a Major Subdivision or Land Development Plans and Plats

1. A land development plan and plat must meet and satisfy the general and the specific provisions set forth in this subdivision and land development ordinance.
2. In addition to those provisions, the subdivision or land development plan and plat shall:
 - a) Include a method of payment to cover the cost of the water and sewer service infrastructure, which can include, but is not limited to, bonds, impact fees, escrow fees and proffers.
 - b) Include provision for coordination among land development with adjoining landowners, including, but not limited to, facilities and streets.
 - c) Include provision for the distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the county.
 - d) Include information to establish that there is a fair allocation of areas for different uses, including, but not limited to, streets, parks, schools, public and private buildings, utilities, businesses and

industry.

- e) Show that there is a water and sewer supply.
- f) Provide for setback and lot size measures within the subdivision and land development plan.
- g) Where applicable, include the standards used for designating land which is subject to flooding or subsidence, details for making it safe, or information showing that such land will be set aside for use which will not endanger life or property and will not further aggravate or increase the existing menace.
- h) Disclose the control measures for drainage, erosion, and sediment.
- i) In addition to what is required elsewhere in this ordinance, provide a description of the coordination of streets, sidewalks and pedestrian pathways in and bordering the land development, including a letter from the Division of Highways stating that the plan provides sufficient access to state roads.
- j) Provide a description of the design, construction and improvement measures to be used for the streets, sidewalks, easements, rights-of-way, drainage, utilities, walkways, curbs, gutters, streetlights, fire hydrants, water and wastewater facilities, and other improvements installed, including the width, grade, and location for the purpose of accommodating prospective traffic customers and facilitating fire protection.

F. Approval of Major Subdivision

1. Upon written request of the applicant for a determination, the planning commission must
 - a. determine by vote at the next regular meeting or at a special meeting, whether or not the
 - b. application is complete based upon a finding that the application meets the requirements set
 - c. forth in its governing body's subdivision and land development ordinance.
2. Additionally, the planning commission must determine that an application is complete in meeting the requirements of this subdivision and land development ordinance.
3. At a meeting where the application is determined to be complete, the planning commission
 - a. must set a date, time and place for a public hearing and a meeting to follow the public hearing
 - b. to vote on the application. The public hearing must be held within forty-five days, and the planning commission must notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by the applicant. The planning commission must publish a public notice of the public hearing and meeting in a local newspaper of general circulation in the area at least twenty-one days prior to the public hearing.
4. The Developer and any representatives or witnesses on his behalf may speak at this public hearing, as may members of the public. A majority of the members of the Planning Commission shall constitute a quorum and shall be required for any action. The decision to conditionally approve or to disapprove an application shall be based on whether the proposed subdivision meets the general and specific requirements and standards set forth in this Ordinance. The Planning Commission, in making any decision upon an application, shall be guided by the general purposes set forth in Article 2 of this Ordinance.
5. At the conclusion of the public hearing or a meeting held within fourteen days
 - a. after the public hearing, the planning commission shall vote to approve, deny or hold the application.
6. The application may be held for additional information necessary to make a determination. An application may be held for up to forty-five days.

7. The planning commission shall approve the application after the planning commission determines that an application is complete and meets the requirements of this subdivision and land development ordinance.
8. If the planning commission approves the application, then the planning commission
 - a. shall affix its seal on the subdivision or land development plan and/or plat.
9. If the planning commission approves the application with conditions, then the planning commission must specify those conditions.
10. If the planning commission denies the application, then the planning commission shall notify the applicant in writing of the reasons for the denial. The applicant may request, one time, a reconsideration of the decision of the planning commission, which request for reconsideration must be in writing and received by the planning commission no later than ten days after the decision of the planning commission is received by the applicant.

G. Recording of Major Subdivision or Land Development Plats

After approval of a major subdivision or land development plat by the planning commission and after the conditions of the planning commission are met, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission of Tucker County. If the land is located in counties other than Tucker County, then the land development plat shall also be recorded in the county of the initial land development and in each of the other counties when there is land development in that county.

If Final Approval is granted, the Planning Commission shall place a stamp upon the Final Plat of the subdivision and this stamp shall contain the following information:

1. Title of subdivision.
2. Permit to establish a real estate subdivision in Tucker County, West Virginia.
3. Date of issuance.
4. Signature of the Chairperson of the Tucker County Planning Commission or the county planner.

Article 14: Variance

Any request for a variance from the provisions of this Ordinance shall be made in written form and shall be submitted to the Planning Commission.

The Planning Commission may grant a variance to this Ordinance when evidence is presented showing that such a variance will not materially affect the implementation general intent of this Ordinance. The application for a variance shall be submitted with the application for the purposed subdivision or land development, including payment of fees, if applicable.

Where the Planning Commission finds undue hardship may result from strict compliance with this Ordinance, it may issue a variance so that justice may be done and the public secured, providing such variance will not have the effect of nullifying the intent and purpose of the goals and policies of this document. The Planning Commission shall determine extraordinary hardship only if it finds the following facts in regard to the purposed subdivision.

- That the land is of such shape and size, or it is affected by such topographical conditions, or is subject to subject to such title limitations of record that it is impossible and impractical to comply with the specific issue within this Ordinance.
- That the granting of the variance not be detrimental to the public or injurious to other property in the vicinity

of the subject property.

Article 15: Appeal

A. Appeal Process

1. An appeal may be made by an aggrieved person from any decision or ruling of the planning commission to the Circuit Court of Tucker County, or to the circuit court of the county having the largest area of the subdivision and land development project pursuant to the provisions of West Virginia Code, §8A-9-1.
2. Such appeal must be perfected within thirty days after the date of the denial of an application or the issuance of any other adverse final decision by the planning commission by filing the petition, specifying the grounds of the appeal in writing. Should the affected land or a major portion thereof be located in another county, the petition must be filed with the circuit court of the county in which the affected land or the major portion of the affected land is located.

Article 16: Amendment

All amendments to this Ordinance shall be adopted by the Tucker County Commission according to the procedures set forth in §8-24-18 through §8-24-22 of the West Virginia Code.

Article 17: Forms and Fees

The Planning Commission shall have the authority to devise such printed forms as will reasonably assist in the implementation of this Ordinance.

Reasonable fees for examining plat, conduction project inspection and other required material shall be proposed by the Planning Commission and approved by the Tucker County Commission. The amount of the fees will approximate, as closely as possible, the costs of performing the review work and the inspections. The County Commission and Planning Commission may vote to increase fees in the future as deemed necessary to cover increased costs associated with subdivision required processing fees. The initial fee schedule is found in Article 20 of this document.

The base fee is payable upon submission of the application and is non-refundable. If the developer wishes to submit the subdivision in sections or a phased development, either for preliminary or final approval, the base fee shall be applicable for each section or phase. Final Plat approval is not official until the per lot fee and other costs are paid.

Article 18: Violation and Enforcement

A. Violation

1. It shall be a violation of this Ordinance for an Owner owning or controlling any land subject to the provisions of this Ordinance to sell, offer for sale, lease, transfer, contract to sell or in any manner agree to sell any lot, tract, or parcel of land without having first fully and completely complied with this Ordinance.
2. It shall be a violation of this Ordinance for an Owner owning or controlling any land subject to the provisions of this Ordinance to begin construction of any phase or aspect of a subdivision

including, but not limited to, the building of roads, the installation of utilities, construction of homes, sewer facilities, drainage facilities, or other improvements without preliminary approval of the Planning Commission and/or County Planner. Exempted from this provision are any preliminary testing, invasive site inspections and assessments necessary to determine the feasibility of a project.

3. It shall be a violation of this Ordinance for any Owner to sell, attempt to sell, or describe a lot or parcel of real estate subject to this Ordinance in the instrument of transfer or other legal document used in the process of selling or transferring with the intent to evade, avoid or circumvent this Ordinance.
4. It shall be a violation of this Ordinance for any Owner to violate or fail to comply with any Article or sub-part of this Ordinance.

B. Penalty

1. Any Owner who violates any provision of this Ordinance shall be subject to a civil penalty of \$100.00 for each violation. Each day that a violation continues unabated shall constitute a separate violation and an additional \$100.00 per day civil penalty.

All civil penalties assessed under this provision must be paid in full to the Planning Commission before a subdivision will be granted final approval.

In the event that the Owner fails or refuses to pay assessed civil penalties imposed under this provision, the Planning Commission is authorized to institute legal proceedings in the Tucker County Magistrate Court or the Tucker County Circuit Court to collect same.

2. In addition to imposing the above penalties or without imposing any penalties, the Planning Commission, through its chairperson or other designated officer, is authorized to seek a temporary restraining order and/or a permanent injunction in the Circuit Court of Tucker County to restrain or prohibit an Owner from violating the provisions of this Ordinance.

In the event that the Planning Commission substantially prevails under this provision, the Owner shall be charged, assessed and obligated to pay to the Planning Commission all costs, fees, expert witness fees, attorney fees and all other costs and expenses of litigation incurred by the Planning Commission in the prosecution of such actions.

Article 19: Validity, Conflict, Severability with other Laws

A. Validity

If any article, section, subsection, paragraph, clause, or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, such decisions shall not affect the validity of this Ordinance as a whole or any other part thereof.

B. Conflict with Other Laws

Where the provisions of this Ordinance impose greater restrictions than those of any other ordinance or regulation, the provisions of this Ordinance shall be controlling. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this Ordinance, the provisions of such statute, ordinance or regulation shall be controlling.

C. Severability

If any provision of this Ordinance be held invalid or void, all remaining provisions shall continue to have full force and effect.

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Article 20: Fee Schedule

Minor Subdivision application fee	\$ 0.00
Major Subdivision application fee	\$ 175.00
Review of Minor Subdivision Plat (5 parcels or less)	\$ 0.00
Review Major Subdivision Preliminary Plat	\$ 650.00
Reissue of Plat or Plat Correction/Amendment.....	\$ 100.00
Variance application.....	\$ 100.00
Public Hearing Fee.....	N/A
Public Hearing Recording and Transcripts costs are the responsibility of the developer.	
The Developer shall also be responsible for all publication costs incurred by the planning commission in publishing any notices which are required under this Ordinance.	
Site Review Fee per Visit.....	\$ 150.00
Copies of submitted major subdivision projects.....	\$ 0.50 per page
Copy labor billed at \$ 20.00 per hour	

Application Exhibit 1

Name of Property Owner _____

Address of Property Owner _____

Contact information/ Property Owner Phone _____

Email _____

Name of Developer (if different from property owner) _____

Address of Developer _____

Contact information for Developer Phone _____

Email _____

Name of Proposed Subdivision or Land Development _____

Address of Subdivision or Land Development _____

General description of current and prior development history of developer _____
Attach additional sheets as needed.

Name address, email and phone number of each attorney, land surveyor, professional engineer, or any authorized agent involved in this project. Attach additional sheets as needed.

Total area of subdivision or land development project, including number of lots and surface area of each lot.
Attached additional sheets as needed.

Include plans and plats and fees according to fee schedule set forth in this document or the most recent updated version.

Include bonding agent if applicable _____

Address and contact information for bonding agent _____

Exemption: Reason _____

Questions or additional information: tcplanningwv@gmail.com