

An aerial photograph showing a flooded area. In the center, a car is partially submerged in murky water. To the left, there is a pile of debris, including what looks like a roof or a large piece of wood. The surrounding area is a mix of grass, rocks, and some small trees. The overall scene suggests a natural disaster, likely a flood.

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WHEN THE FLOOD CAME

THE UNIQUE ROLE OF THE LAND USE
AND SUSTAINABLE DEVELOPMENT
LAW CLINIC BEFORE AND AFTER THE
SUMMER 2016 DISASTER.

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WHEN THE FLOOD CAME

In June 2016, southern West Virginia was devastated by flooding and landslides. The losses were staggering: 23 people dead; 1,500 homes destroyed; and 4,000 homes damaged. Business and schools were wiped out. Recovery costs related to the flooding are now close to \$340 million.

For hours, the rain poured until the creeks rose up and the floodwaters rushed down the hills, into the streets, over lawns and up porch steps, and through doors and windows. Homes, with their cherished family possessions accumulated over a lifetime, were engulfed in a matter of hours.

The whole world seemed to be soaked first with water and then with mud. After the water receded, walls in homes and businesses stained with high-water lines and filled with mold served as a reminder of the deluge. Floors, yards, gardens, and streets were covered with a thick layer of stinking mud and debris. Governor Tomblin declared a state of emergency in 44 counties. President Obama signed a federal disaster declaration that deployed FEMA resources.

At WVU College of Law, one clinic in particular has been part of the recovery efforts. The Land Use and Sustainable Development (LUSD) Law Clinic was already working in several of the effected communities before the flood. After the flood, their efforts in these communities were vital.

Janet Osborne, of Clay, watched the bottom level of her house wash away. Even after the waters receded, her house was deemed too unsafe for her ailing husband of 52 years, Douglas Osborne, who had been in a nursing home, to move back in. He died without ever being able to return. Still, she calls herself fortunate. She sees all the people still living in tents in her community and fears what will happen to them when cold weather sets in.



Richwood, West Virginia

When the planning commission in Richwood, West Virginia, adopted its new comprehensive plan in early June 2016, the community's future looked bright.

The LUSD Law Clinic had worked closely with Richwood's municipal government to develop the plan. Clinic staff and attorneys assessed the city's needs and outlined ways to improve infrastructure and facilitate economic development while conserving natural resources. The plan is, essentially, a blueprint for successful, sustainable growth, and development.

Richwood was once a vibrant hub for trade, commerce, and entertainment. The center of town rests in a valley next

plan identified flooding as a constant concern for Richwood because it is located at the junction of the South Fork and the North Fork of the Cherry River.

"Part of the comprehensive planning process is thinking strategically about where a town wants new development," said Garvey. "Richwood's comprehensive plan states that future development should be encouraged in relatively flat areas that are outside the floodplain. It also expresses the need for the local government to implement a storm water management plan and identify long- and short-term goals to address the storm water runoff issues the city often faces."

"Buildings that were already dilapidated were now wiped out by the flood, and buildings that were previously okay were now dilapidated because they had been flooded." — Jesse Richardson

to the Cherry River, in the shadow of towering mountains blanketed by timber forests.

By the late 1920s, the Cherry River Boom and Lumber Company employed hundreds there. It spawned other factories in town that created products such as clothespins, axe handles, and paper. In fact, Richwood was home to the largest sole leather tannery and the largest clothespin factory in the world. Coal mines flourished within the surrounding mountains.

Richwood saw continued economic growth until the coal and timber industries declined in the 1970s and 1980s. Most other economic sectors in the city have declined since then, leaving the local government with limited resources.

So when they decided it was time to re-create and redevelop the city, Richwood leaders turned to the LUSD Law Clinic.

Working across West Virginia since 2011, the LUSD Law Clinic has helped create and implement more than 30 comprehensive plans or comprehensive plan updates for communities like Richwood.

"Typically, larger municipal governments have a certified planner on staff and maybe even a municipal attorney, but a lot of the communities in West Virginia are small and they just don't have the resources to hire a professional staff," said Kat Garvey, the Clinic's director. "So we help them develop and implement comprehensive plans and other planning documents."

Richwood's new comprehensive plan outlined a detailed strategy to develop a local arts community and niche markets to boost the city's economy, to revitalize and beautify the downtown, to improve infrastructure and get rid of dilapidated homes and buildings, and to develop safe and affordable housing.

The plan also addresses zoning and land use regulations, including a plan for floodplain management. The comprehensive

plan identified flooding as a constant concern for Richwood

But on June 22 the rain came and kept on coming. The lush forests overlooking Richwood seemed to shrink as they were engulfed by clouds that carried a seemingly never-ending rain.

The flooding in Richwood hit just one week after the planning commission adopted the comprehensive plan. There was no time to implement the kind of floodplain management outlined by the LUSD Law Clinic.

The water damaged 100 of the city's structures, some of which were already identified as dilapidated before the flood.

But the work done by the Richwood planning commission and the LUSD Law Clinic helped benefit the community, according to Garvey.

"The comprehensive planning process primarily helped establish some goals and objectives for Richwood and now, after the flood, when they're feeling overwhelmed, it's a document they can turn to for guidance," she said. "Another benefit is that the Comprehensive Plan is a prerequisite to some forms of relief funding."

By adopting a comprehensive plan before the flood, Richwood received a \$650,000 grant from Hosanna Industries to help rebuild. The grant would not have been awarded without the plan.

The Richwood municipal government also took the LUSD Law Clinic's advice after the floods to adopt a building code. The code outlines specific regulations relating to developing inside the floodplain.

"The building code has a set of accepted standards that help determine what makes a building structurally sound. Now that they have the building code, new development is likely to have much better structural integrity and will hold up longer than if it weren't built under the code," Garvey explained.



Richwood, West Virginia Richwood volunteer firefighters look on as floodwaters turn Oakford Avenue into a river and a landslide knocks out power to the city.

Alderson, West Virginia

On the border of Greenbrier and Monroe Counties, West Virginia, lies the small town of Alderson. After the flooding, the town council needed to demolish damaged structures and haul away debris. Thanks to the LUSD Law Clinic's work, Alderson was able to begin its journey to recovery quickly.

"There are a lot of dilapidated buildings in West Virginia, and the flood exacerbated that in a lot of situations, like in Alderson," said Jesse Richardson, the Clinic's lead attorney. "Buildings that were already dilapidated were now wiped out by the flood, and buildings that were previously okay were now dilapidated because they had been flooded."

Some of those structures posed a threat to public health and safety and needed to be removed immediately.

But to do that, a building inspector or FEMA official needed to designate the structures as a "total loss." Alderson also needed the help of the National Guard. The LUSD Law Clinic advised Alderson on how to call an emergency meeting, draft the proper emergency ordinance, and

conduct the process to comply with statutory and constitutional requirements.

As a result, the National Guard was able to demolish the "total loss" structures and remove debris, completing the work in weeks. It would have taken Alderson a few years to remove the material without the ordinances and the National Guard's assistance, Richardson said.

Taking down dilapidated buildings also allowed Alderson to focus on a need outlined in its Comprehensive Plan.

Christy DeMuth, the Clinic's land use planner, had worked with Alderson's local government long before the floods to create and implement the plan. It had been adopted in June.

"In Alderson's case, they identified areas of the town that were concerns in regards to abandoned and dilapidated buildings, so now they can use their plan to determine what their vision is moving forward in these areas that were more impacted by the floods," DeMuth explained.



Paul Raines (left), owner of Western Auto in Rainelle, saw the flood coming just in time to tape and barricade his doors shut, but by 8 p.m. the water broke through, carrying debris and mud inside and 40 years of merchandise and memories out. It wasn't until 11 a.m. the next day that the water receded enough for him to wade out. His store is open again, but he worries for the future of the businesses and jobs in flood-affected towns like his.

Rainelle, West Virginia

North of Alderson, in Greenbrier County, the Appalachia Service Project has partnered with the Town of Rainelle in an effort to build more than 50 homes for residents who lost everything in the floods.

Before the project could gain funding, though, the organization needed either an engineer or an attorney to visit Rainelle and designate the homes as blighted properties. So the Appalachia Service Project approached the LUSD Law Clinic.

"The Clinic had recently been reviewing statutory language on the legal definition of 'blight,'" said Clinic director Garvey, "so it was easy for us to look at that definition and then look at those properties and make a determination that yes, in fact, all of those properties were blighted."

The Clinic's designations of blighted properties have allowed the Appalachia Service Project to move forward and help Rainelle's residents return to a normal life.

The Clinic's students and supervising attorneys are now providing pro bono real estate services to the Appalachia Service Project.

Down the street, Rainelle Maytag store owner Bill Bell (right), his sister, and his wife spent the night on the roof of the store as the flood destroyed thousands of dollars of appliances, kitchen cabinets, and parts. Gas, leaking from tanks in the store below, filled the air. But he said the worst part of the flood was driving through town after the waters retreated, seeing the homes of friends and family destroyed, their belongings scattered and heaped in piles beside the road like garbage.



Clendenin, West Virginia Muddy cars sit in front of a flooded home, June 25, 2016.

Photo by Kara Lofton, West Virginia Public Broadcasting

Aftermath

Months later, the communities hit hardest by the floods are still, in many ways, in the early stages of recovery efforts.

Almost 9,000 West Virginia homeowners and renters had applied for FEMA disaster assistance. More than \$33.3 million in individual housing assistance grants had been approved.

But local officials are ready to move away from just being reactive to these kinds of tragedies.

Towns like Alderson, White Sulphur Springs and Richwood have approached the LUSD Law Clinic to help prevent history from repeating itself, and the Clinic is helping them prepare for the possibility of more catastrophic flooding.

One such initiative is a flood-planning workshop for community leaders hosted by the LUSD Law Clinic, West Virginia Chapter of the American Planning Association and FEMA. The first one was held in Lewisburg in November. A continuing legal education seminar for attorneys and planners focused on flood-planning will be held in conjunction with the West Virginia Municipal League Conference in early 2018 in Charleston.

“The flood was a tragic event, and it cost lives and property,” said Richardson. “However, the silver lining is that

we now have communities who come together and say ‘we need to do a comprehensive plan to deal with these flood issues’ or ‘we need to really work on our zoning ordinance to make sure that this doesn’t happen again.’ So I think that has been one positive outcome of the flood.”

Being able to provide land use planning and legal services pro bono allows communities to work on some longer term goals like economic development, floodplain management and historic preservation — all issues they normally would not have the resources to tackle by themselves, Garvey explained.

“As communities get into the more intermediate and long-term recovery efforts, there will be more interest in land-use planning and managing development outside of the floodplain,” she predicted.

“There will be an increased understanding of the tools that communities can use to protect residents from floods. Because the Clinic has already worked with a lot of these communities, we are a trusted resource they can call and ask questions, and we will be there for them as they deal with what comes next.”

PLANNING AHEAD

Last fall, the Land Use and Sustainable Development Law Clinic hosted a workshop in Lewisburg, West Virginia, that addressed planning for the next flood. Representatives from FEMA and the West Virginia Chapter of the American Planning Association assisted with the event and help lead discussions.

Workshop participants included representatives of the Regional Planning

and Development Councils, the Governor’s Office, HUD, the State Office of Homeland Security, planners, floodplain managers and elected officials and citizens from the communities most impacted by the flood. A variety of flood preparedness issues were discussed with a focus on regulatory and nonregulatory strategies to minimize human casualties and property damage.

The themes that emerged from the workshop included regional cooperation and collaboration, coordination between local, state and federal agencies, NGOs and other stakeholders, and a need for continued education and training.

BY THE NUMBERS

9,531

Visitors served in the State and FEMA Disaster Recovery Centers

7,200

FEMA inspectors of flood-damaged properties

735

Low-interest disaster loans approved by U.S. Small Business Administration totaling more than \$47 million

8,974

West Virginia homeowners and renters who applied for FEMA disaster assistance

FLOOD COSTS

\$339,760,963

Total recovery costs related to the flooding

\$88,763,765

Public assistance, including paying property damage and expenses incurred by local governments and nonprofits

\$33,427,757

Individual assistance, including people whose homes or rental properties suffered damage

\$6,460,441

Other needs assistance includes expenses related to individuals and households such as medical, dental expenses and burial expenses

\$130,000,000

For schools, which will go to rebuild Herbert Hoover High School, Clendenin Elementary, Richwood High, Richwood Middle and Summersville Middle School

\$1,609,000

Direct federal assistance, mostly covering mobile home units

\$32,000,000

Stream cleanup performed by the West Virginia Conservation Agency

\$37,500,000

For mitigation to prevent any future dangers

Viewfinder



► Rainelle, West Virginia

The extent of flooding in Rainelle last summer reflects the scope of devastation that continues to disrupt lives in many communities throughout southern West Virginia.

Photo by Rob Atha