The fundamental error in petitioner's contention is his assumption that this Court has any discretionary authority vested in it in extradition matters. As recently as August 15, 1980 in *Commonwealth v. Brown*, supra, Justice Samuel J. Roberts of the Supreme Court of Pennsylvania sitting by designation as a member of a three judge panel of the Superior Court and speaking for a unanimous panel held:

> "As we have summarized, 'Extradition is a constitutionally mandated process and *will be ordered* if the subject of the extradition (1) is charged with a crime in the demanding state, (2) is a fugitive from the demanding state, (3) was present in the demanding state at the time of the commission of the crime, and (4) if the requisition papers are in order.'" (Page 1134) (Italics ours)

In our judgment the United States Constitution, the Uniform Criminal Extradition Act and the decisions of the Appellate Courts of Pennsylvania coalesce to eliminate discretionary authority on the trial court level in extradition proceedings, and to mandate extradition if the Commonwealth meets the four tests identified by Justice Roberts in *Commonwealth v. Brown*, supra. [See also Commonwealth ex rel. *Marshall v. Gedney*, 478 Pa. 299, 386 A.2d 942 (1978).] Therefore, we also conclude this Court is without jurisdiction to consider equitable considerations or equitable grounds for granting a writ of habeas corpus in proceedings of this unique nature. Consequently, the proferred evidence is irrelevant and the Commonwealth's objection to it is sustained.

Lest the petitioner and those who have joined with him in his efforts to resist extradition conclude that the law governing extradition is unreasonable and unjust, we are constrained to observe:

1. The founding fathers of these United States recognized the necessity of returning fugitives from justice to the state having jurisdiction of the crime and provided for extradition in Article IV Section 2 of the United States Constitution.

2. The adoption of the Uniform Criminal Extradition Act by the vast majority of the states of these United States evidences a recognition of the necessity for a uniform practical and expeditious procedure for the return of fugitives to the proper jurisdiction, i.e., the scene of the crime, for trial and sentencing according to the laws of that state.

3. If the many courts of the fifty states and the various territories had jurisdiction to inquire into the substantive and

procedural laws of sister jurisdictions, delay, expense, the frustration of justice, and the escape of fugitives would be the most likely result.

4. In the case at bar the petitioner concedes his conviction of a felony in California, that a bench warrant has issued for him for probation violation; but he urges this Court to rule that the people of California must be satisfied with a payment of money rather than the enforcement of their law by their courts. We do not believe the people of Pennsylvania would willingly accept such long distance justice, and we see no justifiable reason to attempt to assume such extraterritorial jurisdiction here.

5. Also in the case at bar, the petitioner would have us consider the hardship imposed upon him, his family and the taxpayers by ordering extradition. However, he ignores the obvious, for we can think of no time when the arrest, the trial, and the incarceration or probation of a criminal defendant does not impose such hardships. The tragedy is that he did not consider such hardships before the commission of the criminal act.

ORDER OF COURT

NOW, this 3rd day of April, 1981, the petition of Russell A. Hoffman, Jr. for a writ of habeas corpus is denied.

The petitioner shall be delivered into the custody of Larry Gillick and/or agent who are authorized to receive him and convey him back to the State of California.

Exceptions are granted the petitioner.

GEESAMAN ET UX. VS. ZONING HEARING BOARD, ET AL. C.P. Franklin County Branch, Misc. Doc. Vol. X, Page 348

Zoning - Appeal From Zoning Hearing Board - Definition, of "Survey" and "Potential" - Abuse of Discretion

1. Where a zoning ordinance deals with construction in flood hazard areas, the requirement of an on-site survey does not necessarily require a courses and distance measure on a draft. Survey may mean an attentive or particular view of the premises with the design to ascertain the conditions, quality or value.

Bank and Trust Company, executors under the Will of Edmund M. Scheible, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

STALEY First and final account, statement of proposed distribution and notice to the creditors of Gifford A. Rook, executor of the estate of Addie Staley, late of Mont Alto, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE
Clerk of Orphans' Court of
Franklin County, Pennsylvania

(6-12, 6-19, 6-26, 7-3)

2. Where a zoning ordinance prohibits residential dwellings where land contains "potential" flood hazards, the word "potential" must be defined in terms of a practical meaning and not in its literal sense.

3. "Potential" flooding as used in the ordinance describes an uncontrollable water situation likely to frequently occur and not the absence of all possible flooding.

4. Where the Zoning Hearing Board relies on expert testimony which is factual and indefinite, there is no abuse of discretion.

Stephen E. Patterson, Esq., Attorney for Appellants

Robert E. Graham, Jr., Esq., Attorney for Intervenors

David S. Dickey, Esq., Attorney for Appellee

D. L. Reichard, II, Esq., Attorney for Intervenor

OPINION AND ORDER

EPPINGER, P.J., April 7, 1981:

Definitions decide this case and the words to be defined are "survey" and "potential." This all comes about because Donald and Linda Rock want to build a house in Waynesboro and have been granted a building permit to do it. David and Irene Geesaman live in an adjoining property. After the permit was granted the Geesamans appealed to the Zoning Hearing Board, who after intermediate proceedings finally approved the issuance of the permit and it is from this action of the board that the Geesamans appeal. We affirm the decision of the board.

There are two sub-sections of the Waynesboro Zoning Ordinance of 1978 which are at the heart of this dispute and these contain the words to be defined. But first we must note that the ordinance sets out in Section 4-8 to regulate development in flood hazard areas. A flood area is identified by the existence of alluvial soils, water deposited soils present in areas most often inundared by flood waters (Sec. 4-8-2.1). Alluvial soil areas are designated on the Offical Zoning Map and when a development plot is located in or within 50 feet of such soil areas it is subject to special treatment in the ordinance. The Rock tract is one of these.

This brings us to the first Section of the Ordinance which we must consider, Sec. 4-8-3.2. It provides:

> To determine the exact extent and nature of areas susceptible to potential problems of flooding, wetness, or pollution in such areas, the Zoning Officer shall require that a detailed *on-site survey* be made. Such *on-site survey* shall be made by a qualified engineer of soil scientist in accordance with accepted survey techniques. (italics supplied)

Section 4-8-4 goes on to prohibit certain uses, among them the erection of permanent residential dwellings in the following terms:

> On any site or portion of a site which is found, based upon detailed investigation pursuant to the provisions of the approvel procedure as indicated above, to contain *potential* hazards due to flooding chronic wetness, or pollution, the use of the District in which the site is located shall apply except that the following uses shall be prohibited: All permanent residential dwellings . . . (italics supplied)

In taking this appeal the Geesamans say the required on-site survey was not made, and if not made, then the board has no authority to grant the permit. But even if made, then the site contains potential hazards due to flooding or chronic wetness and no residential dwelling may be built on the lot and again, the board could not approve the permit.

In their brief and argument the Geesamans seemed to view a survey as a courses and distances measure of the property recorded on a draft. There was none in this case though there was a plan of several lots, including those of the parties (the Benchoff plan) apparently prepared to comply with the Borough's Erosion and Sedimentation Control Ordinance (No. 835) but the courses and distances were not recorded on it. At some stage in these proceedings, John R. Akers, District Conservationist with the Soil Conservation Services of the U.S. Department of Agriculture analyzed the soil in the area and recommended steps to the Borough Manager to minimize the flood hazards if the Rocks built on their lot. Both of these matters were referred to in the testimony and were evidence used by the board in reaching its conclusions in this case.

"To survey has several significations. It may mean to inspect, or take a view; or to view with attention; to view with a scrutinizing eye; to examine with reference to condition, situation and value; to measure land; and many others. 'Survey' as a noun may mean an attentive or particular view or examination, with the design to ascertain the condition, quality or value." *Fulton v. Town of Dover*, 6 A. 633, 638, 6 Del. Ch. 1 (1886). We conclude that survey as used in the ordinance is

not limited to a courses and distances plot plan argued for by the Geesamans but is used in the broader sense. We believe this is supported by the language of the ordinance. "On-site" obviously means that those who are making it must go on the ground and look at it as opposed to reviewing text material or other data. Then the survey may be made by a qualified engineer or soil scientist. This expressly nullifies the idea that it is a land survey in the usual sense for these and made generally by Registered Surveyors or Civil Engineers.

The Benchoff plan that was introduced was a particular examination of the property, the purpose of which was to ascertain the condition of the plot in regard to elevation, water levels, etc. Therefore the zoning regulations were complied with, their purposes served. On-site surveys were used to determine potential water problems before approving the contemplated use.

We consider it to have been made by a qualified engineer in accordance with the accepted techniques for making that type of survey - a grading plan. We have no problem in supporting the board's conclusion that the survey itself satisfied the requirements of the ordinance. Surely the survey was consulted before the final permit was issued because it was issued subject to the Rocks compliance with the survey grading plan.

So the board committed neither an abuse of discretion nor an error of law in concluding that the plan or survey met the requirements of the ordinance.

The Geesamans second contention is that the board erred in concluding the Rocks met their burden or proof. It was up to them to show by competent and sufficient evidence that the site did not contain potential hazards due to flooding, chronic wetness or pollution. Evidence on this subject was presented by reference to the recommendations of Soil Conservationist Akers, the Benchoff plan and Registered Surveyor William A. Brindle's hydrologic study of the site area.

The second word to be defined is "potential." If it means "possible" then the Rocks have not met their burden of proof, because there is a possibility of flooding in the area. Mr. Akers' recommendations of ways to "minimize flood damage," the fact that the Rocks must comply with preventive measures suggested by Akers and the Benchoff grading plan, photographs of the property showing there it has been flooded at times, indicate that water hazards are possible here.

We daresay, though, that no one could meet the burden of

showing the absence of all "possible" flooding and/or wetness problems. Given the right combination of natural occurrences water problems are conceivable anywhere. Hurricane Agnes teaches us that and in the testimony in this case there was talk of the 100-year's floods.

So we believe that the word "potential" as used here is not to be taken in its absolute or literal sense, but rather as having the practical meaning which the law ordinarily ascribes to such abstract terms. Cf. *Dauphin Deposit Trust Company v. Lumberman's Mutual Casualty Company*, 171 Pa. Super. 86, 87, 88; 90 A.2d 349 350 (1952). Quoting from *Frame v. Prudential Ins. Co.*, 358 Pa. 103, 106, 56 A.2d 76 (1948) in the *Dauphin* case where plaintiff had to exclude possible pre-existent infirmities as a contributing factor in causing death, the court said: "The right to recover on the policy was barred only if there was *in fact* such a contributing factor, not if, as a mere matter of speculation, there might have been" (italics in the original). Given this kind of practical treatment, "potential hazards due to flooding chronic wetness or pollution" as used in the ordinance describes an uncontrollable water situation likely to occur with such freqency as to make residential living on the tract dangerous and hazardous to the occupant and those in the area. The fact of presence of water on the lot in an Agnes or a 100-year's flood with a design or plan to overcome the problem in not such a situation.

Adopting this definition we find no abuse of discretion in the board's finding that the Rocks met their burden of proof. The board relied on the expert testimony of Brindle who stated that the boundary of the flood plain lay between the Rocks' proposed house and the West Branch of the Little Antietam Creek so that the proposed house would not be in a flood plain; that the high water mark of the 100 year storm would be between the proposed house and the stream; and that, in his opinion, the proposed construction of the Rock house would not create a flood hazard to the Geesamans. Believing this testimony the board concluded that the Rocks had shown the site to contain no potential hazards due to flooding, chronic wetness or pollution.

The board accepted the Brindle testimony and the other evidence as meeting the Rocks' burden of proof and then held that the Geesamans did not come forth with proof to show that potential hazards existed on the Rock property. The Geesamans called Soil Consultant Richard S. Long, but the board concluded that his testimony was indefinite and that he did not give an opinion as to whether a potential hazard due to flooding, chronic wetness or pollution would be present on the

Rock site if construction proceeded.

Aside from Mr. Long the Geesamans' witnesses testified primarily to seeing the Rock property (or portions of it) water covered at various times. The Board based its conclusions on Brindle's more factual, definite testimony and the other evidence. We find no error or abuse of discretion in doing so.

Since we did not take testimony, our task is to determine whether the board is chargeable with an abuse of discretion. *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 268 A.2d 765 (1970).

> An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overriden or misapplied, or the judgment is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record, discretion is abused. When the court has come to a cnclusion by the exercise of its discretion, the party complaining of it on appeal has a heavy burden; it is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power.

Commonwealth ex rel. McQuiddy v. McQuiddy, 238 Pa. Super. 390, 393-94, 358 A.2d 102, 104 (1976) (citations omitted). We find no such abuse.

The Geesamans have also charged the board with error in several of its findings of fact. We see no need to discuss these challenges separately because some already have been dealth with; the remainder are based on findings occasioned by the board's acceptance of Brindle's testimony, which we have upheld.

ORDER OF COURT

April 7, 1981, the appeal of David B. Geesaman and Irene B. Geesaman from the decision of the Zoning Hearing Board of the Borough of Waynesboro is dismissed and the decision of the board is sustained. The parties shall each pay their own costs.

BATHGATE v. CENTRE COUNTY PLANNING COMMISSION, ET AL., C.P. Centre County, No. 80 - 2443

Equity - Municipalities Planning Code - Security for Improvements.