

**To:** New Jersey Law Revision Commission  
**From:** Lauren Haberstroh, Angela Febres, Legislative Law Clerks  
**Re:** Just Compensation Interest Rate in Eminent Domain Actions as discussed in *State by Comm'r of Transp. v. St. Mary's Church Gloucester*, 464 N.J. Super. 579 (2020).  
**Date:** October 11, 2021

## M E M O R A N D U M

### Project Summary<sup>1</sup>

Title 20 of the New Jersey statutes pertains to eminent domain. The Eminent Domain Act of 1971 was enacted to establish uniformity in condemnation actions.<sup>2</sup> The Act contains a “general repealer” that is applicable to “every agency, authority, company, utility or any other entity having the power of eminent domain exercisable within the State of New Jersey except as exempted in section 49 of [the Act].”<sup>3</sup> The Eminent Domain Act also contains a provision prescribing how interest on just compensation awards is to be determined.<sup>4</sup> The interest rate on just compensation awards is, however, also addressed in Title 27, which pertains to highways.

In *State by Comm'r of Transp. v. St. Mary's Church Gloucester*, the Appellate Division considered whether the general repealer in the Eminent Domain Act repealed an exception in N.J.S. 27:7-22, which prescribes a fixed interest rate on “just compensation” awards and conflicts with the provision in the Eminent Domain Act.<sup>5</sup> If repealed, the interest provision within the Act, N.J.S. 20:3-32, would apply instead.

### Statute Considered

N.J.S. 20:3-32 provides, in pertinent part, that:

. . . Unless agreed upon by the parties, the amount of such interest shall be fixed and determined by the court in a summary manner after final determination of compensation, and shall be added to the amount of the award or judgment, as the case may be. . .<sup>6</sup>

N.J.S. 20:3-50 provides, in pertinent part, that:

. . . All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, hereby repealed. This act shall apply to every

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<sup>1</sup> Legal research and preliminary work on this project was performed by Daniel Tomascik.

<sup>2</sup> *State by Comm'r of Transp. v. St. Mary's Church Gloucester*, 464 N.J. Super. 579, 587 (2020).

<sup>3</sup> N.J.S. 20:3-50.

<sup>4</sup> N.J.S. 20:3-32.

<sup>5</sup> *St. Mary's Church Gloucester*, *supra* note 2 at 585-6.

<sup>6</sup> N.J.S. 20:3-32.

agency, authority, company, utility or any other entity having the power of eminent domain exercisable within the State of New Jersey except as exempted in section 49 of this act. . .<sup>7</sup>

N.J.S. 27:7-22 provides, in pertinent part, that:

. . . If the amount of the award as finally determined by the court shall exceed the amount so deposited, the person or persons to whom the award is payable shall be entitled to recover from the department the difference between the amount of the deposit and the amount of the award, with interest rate of 6% per annum thereon from the date of the making of the deposit...<sup>8</sup>

### Background

In *State by Comm'r of Transp. v. St. Mary's Church Gloucester*, property that belonged to the church was condemned for use in a Camden County highway construction project.<sup>9</sup> The Commissioner of the Department of Transportation deposited \$1,865,000 in the Superior Court Trust Fund as compensation for the condemned land.<sup>10</sup> Following a trial, a jury awarded the church \$2,960,00 as just compensation, resulting in a \$1,095,000 balance to be paid by the Commissioner, with interest.<sup>11</sup>

The interest due on the remaining balance of the compensation award was the basis of the dispute between the parties.<sup>12</sup> The Commissioner proposed a pre-judgment interest of 3.5 percent per annum and a post-judgment interest rate between 2.25 and 3.5 percent per annum, both in accordance with Rule 4:42-11(a)(iii).<sup>13</sup> The Commissioner argued that N.J.S. 20:3-32 was applicable, and that it vested the trial court with "broad discretion to set an interest rate on awards of just compensation and relied on Rule 4:42-11(a)(iii) as a guideline."<sup>14</sup> The church requested a six percent per annum rate for both pre- and post-judgment interest, arguing that N.J.S. 27:7-22 mandated such an award.<sup>15</sup> In response, the Commissioner argued that N.J.S. 27:7-22 had been impliedly repealed by N.J.S. 20:3-50, making N.J.S. 20:3-22 the controlling statute.<sup>16</sup>

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<sup>7</sup> N.J.S. 20:3-50.

<sup>8</sup> N.J.S. 27:7-22.

<sup>9</sup> *St. Mary's Church Gloucester*, *supra* note 2 at 582.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 583.

<sup>16</sup> *Id.*

The trial court, relying on N.J.S. 27:7-22, awarded St. Mary's a six percent per annum interest rate on its just compensation award.<sup>17</sup> The Court found that N.J.S. 27:7-22 was "clear and unambiguous as to this point," and that it had not been impliedly repealed by N.J.S. 20:3-50.<sup>18</sup> The Court noted that a six percent per annum interest rate might be "high for our times" but concluded that it was bound by N.J.S. 27:7-22<sup>19</sup> The Commissioner of Transportation appealed.

### Analysis

The Appellate Division began its analysis with a review of the language in the condemnation statutes to ascertain the applicable interest rate in post-judgment, just compensation adjudications.<sup>20</sup> The Court noted that the plain language in N.J.S. 20:3-50 directly contradicts the plain language in N.J.S. 27:7-22, and that it "uncovered no precedential authority addressing the issue before the court."<sup>21</sup> To resolve the conflicting mandates, the Court examined the Legislature's intent in enacting each statute and the breadth of the general repealer.<sup>22</sup>

In *County of Monmouth v. Wissel*, the New Jersey Supreme Court determined that the Legislature's primary purpose in creating the Eminent Domain Act was "to make uniform the legal requirements for *all* entities and agencies having the power to condemn."<sup>23</sup> The Court in *Monmouth* also considered the legislative history of the Act and noted that it had been conditionally vetoed by New Jersey's Governor with recommendations that it include language explicitly repealing "any act inconsistent with the new eminent domain law."<sup>24</sup> The Appellate Division in *St. Mary's Church* additionally noted that the Legislature had considered adopting a six-percent fixed interest rate for all condemnations conducted pursuant to the Act, as in N.J.S. 27:7-22, but ultimately rejected it.<sup>25</sup> The Appellate Division determined that the legislative history of N.J.S. 20:3-50, the dates of enactment, and the repealer clearly implied by the language in N.J.S. 20:3-50, was evidence of a legislative intent that the "uniformity in condemnation...include interest rates set through the exercise of judicial discretion."<sup>26</sup>

The need for a detailed review of the history of the legislation in *St. Mary's Church* indicates that the Eminent Domain Act may be difficult for affected parties, especially those without legal training, to understand and apply.<sup>27</sup> This issue is magnified by the significant number of statutes (more than three hundred) that authorize the power of eminent domain in New Jersey.<sup>28</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *St. Mary's Church Gloucester*, *supra* note 2 at 583.

<sup>20</sup> *Id.* at 584.

<sup>21</sup> *Id.* at 585.

<sup>22</sup> *Id.* at 587.

<sup>23</sup> *County of Monmouth v. Wissell*, 68 N.J. 35, 43 (1975) (*emphasis added*).

<sup>24</sup> *Id.* at 41.

<sup>25</sup> *St. Mary's Church Gloucester*, *supra* note 19 at 588.

<sup>26</sup> *Id.* at 588.

<sup>27</sup> *Id.* at 583.

<sup>28</sup> *County of Monmouth*, *supra* note 23 at 38-39.

## **Pending Legislation**

To this time, one bill has been introduced in the New Jersey Legislature that pertains to the Eminent Domain Act.<sup>29</sup> This bill does not address the issue raised by *St. Mary's Church Gloucester*.

## **Conclusion**

Staff seeks authorization to engage in additional research and outreach to determine whether it would be appropriate to address the conflicting statutory provisions identified by the Appellate Division in *St. Mary's Church Gloucester*.

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<sup>29</sup> See S.B. 1115, 219th Leg., First Annual Sess. (N.J. 2020) (Amends N.J.S. 20:3-6, N.J.S. 20:3-12, and N.J.S. 20:3-13 to require just compensation of a single-family residence to be based on the cost of comparable relocation properties within a twenty-mile radius).