NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2014-10T2
A-2302-10T2

NEW UNITED CORPORATION and
DR. CLYDE PEMBERTON,

Plaintiffs-Appellants,

v.

ESSEX COUNTY VOCATIONAL-TECHNICAL
SCHOOLS BOARD OF EDUCATION, ESSEX
COUNTY, and JOSEPH DIVINCENZO,
COUNTY EXECUTIVE,

Defendants-Respondents.

ESSEX COUNTY VOCATIONAL-TECHNICAL
SCHOOLS BOARD OF EDUCATION A/K/A
ESSEX COUNTY VOCATIONAL TECHNICAL
SCHOOLS,

Plaintiff-Respondent,

v.

NEW UNITED CORP.,

Defendant-Appellant,

and

FIRST STEPS SERVICES FOR CHILDREN, INC.,

Defendant-Respondent,

and

CITY NATIONAL BANK OF NEW JERSEY, CITY OF NEWARK, UNITED STATES OF AMERICA, STATE OF NEW JERSEY, ESSEX COMMUNITY HEALTH SERVICES, INC., LIVING NEW, INC., UNITED LIVING, INC., MUZIK MEDIA, LLC, and WEST MARKET PLAZA, LLC,

Defendants.

Argued February 8, 2012 - Decided April 3, 2012

Before Judges Fuentes, Graves, and J. N. Harris.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-5999-10 and Docket No. L-7474-10.

Daniel P. Silberstein argued the cause for appellants (Daniel P. Silberstein, P.C., attorneys; Mr. Silberstein, of counsel and on the brief).

Robert S. Cosgrove argued the cause for respondent Essex County Vocational-Technical Schools Board of Education (Durkin & Durkin, LLP, attorneys; Mr. Cosgrove, of counsel on the brief; Gregory F. Kotchick, on the brief).

Paul A. Sandars, III, argued the cause for respondents County of Essex and Joseph DiVincenzo, County Executive (Lum, Drasco & Positan, LLC, attorneys; Dennis J. Drasco, of counsel; Mr. Sandars, of counsel and on the brief; Scott E. Reiser, on the brief).

William J. Ward argued the cause for respondent First Step Services for Children, Inc. (Carlin & Ward, P.C., attorneys; Mr. Ward, of counsel and on the brief; John J. Carlin, Jr., of counsel and on the brief; Winifred E. Campbell, on the brief).

PER CURIAM

These consolidated appeals originate in the efforts of respondent Essex County Vocational-Technical Schools Board of Education (the Board of Education) to exercise its "awesome power . . . to take property for public use without the owner's consent." Hous. Auth. of New Brunswick v. Suydam Investors, LLC, 177 N.J. 2, 6 (2003) (citing 1 Nichols on Eminent Domain § 1.11 at 1-7 (Sackman ed., 3d ed. 2002)). Because we conclude as a matter of law that the Board of Education failed to properly align its taking efforts with the strict measure of the Eminent Domain Act of 1971 (the Eminent Domain Act), N.J.S.A. 20:3-1 to -50, we reverse and remand for the entry of a final judgment dismissing the condemnation complaint without prejudice.

I.

There is a lengthy background to this case that we will not explicate in detail, except as necessary to illuminate the issues on appeal. Part of that history was explored by us in the interlocutory appeal captioned, New United Corporation v. County of Essex, No. A-3168-08 (App. Div. April 19, 2010).

Appellant New United Corporation (New United) is owned by appellant Dr. Clyde Pemberton. New United owns one of three commercial condominium units located at the 6.84-acre United Hospital Medical Center campus in Newark. The other two

condominium units are controlled by the County of Essex (the County).[1]

As owners of condominium units in the same regime, New United and the County have been engaged in numerous controversies and disputes since the Master Deed was filed in 1999. In December 2005, their differences spilled into the still-pending litigation (Docket No. L-8794-04) (the 2005 lawsuit) initiated by New United. The dispute revolved around New United's assertions that the County had (1) abandoned its two condominium units, (2) failed to properly maintain their physical integrity (thereby placing the public at risk of harm) and (3) tortiously damaged New United's right to enjoy the economic benefits of its single condominium unit. Ultimately, that litigation resulted in the joinder of the condominium association as a party, the appointment of a temporary custodial receiver to ensure that necessary repairs be undertaken at the site, and the imposition of special assessments against the County to pay for the remediation.

[1] The deeds to the two publicly-owned condominium units indicate that they are held in the name of the Essex County Improvement Authority (the Improvement Authority). The Improvement Authority leased the units to the County in 1999. Except as necessary to precisely identify the parties, we shall refer to the County as the owner of these two units.

At the time the condominium organization was created, it was believed that the County would relocate the Essex County Hospital Center from Cedar Grove into its two condominium units at the Newark campus, and New United would lease and use its condominium unit for medical purposes. This vision remains unfulfilled.

As the 2005 lawsuit progressed, the parties engaged in several discussions in an effort to settle and resolve their numerous differences. Many alternatives and variations were discussed, but one potential solution involved the negotiated sale of New United's condominium unit so that it could be incorporated into a contemplated new vocational-technical school on the site.

In order to be prepared to transform the settlement discussions into a concrete plan of action, an appraisal was commissioned in early 2010 to value the entire campus. In May 2010, Hendricks Appraisal Company, LLC (Hendricks) was formally retained by the Improvement Authority "to perform appraisals of the buildings and property . . . know[n] as New United Hospital." New United was aware of the retention of an appraiser and permitted an inspection of its condominium unit. A ninety-eight page appraisal report, dated May 17, 2010, was authored by Mark E. Hendricks. The report indicated that as of

March 12, 2010, there were two slightly different valuations for the property: (1) "as is" and (2) "without Master Deed [restrictions] and [with a] zone change." Hendricks opined that under the latter situation, "the Market Value of the property, in fee simple interest and subject to assumptions, conditions, and other provisions" was $5,550,000. The projected value of the property "as is" revealed a total of $5,490,000, of which $4,850,000 was allocable to New United's condominium unit and $640,000 to the County's condominium units.

In time, New United suspected that the County had an ulterior motive for conducting the appraisal, which was unconnected with the potential settlement of the 2005 lawsuit. On May 26, 2010, New United's attorney wrote to the County's counsel suggesting "that we abandon any settlement issues related to the litigation, and embark on the formal condemnation process." New United claimed that the appraisal's sole purpose was to enable "the parties . . . [to] use it as a tool to assist in settling this litigation." New United expressly rejected the use of the appraisal for any other purpose, including as "a formal condemnation appraisal."

Meanwhile, the Board of Education was taking steps designed to develop the campus for school purposes. In May 2010, incipient efforts were made by the Board of Education to amend

its capital budget by increasing line item appropriations to cover the projected cost of the land and construction. Separately, the Board of Education tasked an architect to prepare amendments to the Board of Education's Long Range Facilities Plan (LRFP), which would be submitted for approval to the New Jersey Department of Education (the Department). On June 14, 2010, the Board of Education voted to amend its LRFP to consolidate three of its schools into one "State of the Art Campus" to be located at the Newark site, and to acquire the necessary property to house the new facility. In late July 2010, the Board of Education finally submitted an application for land acquisition to the Department pursuant to N.J.A.C. 6A:26-7.1. The application's scope was not limited to New United's interests; instead, it applied to the entire Newark site, which was described as consisting of 7.03 acres of land. On August 17, 2010, the Department approved the land acquisition.

Formal contact between New United and the Board of Education preceded the Department's approval. On June 28, 2010, the Board of Education offered to purchase New United's condominium unit for $4,850,000 (less any remediation costs for mold or asbestos contamination). In the letter making this offer, the Board of Education's attorney attached a copy of

Hendricks's May 17, 2010 appraisal report. The letter invited New United to provide the Board of Education with "any additional information you may wish to provide concerning the evaluation of the Property," and sought permission to enter the condominium unit "to have appropriate professionals evaluate same for mold, asbestos and/or other contaminants, if any and the cost of remediating same." Finally, the letter promised that if the Board of Education received no response from New United within a fourteen-day period, "condemnation proceedings will, as a matter of necessity, be instituted."

Coincidentally, because the 2005 lawsuit had not settled, the matter continued apace. On July 26, 2010, three months after our remand, the Law Division granted New United's motion for partial summary judgment and ordered the County to make certain emergency repairs to the campus by October 1, 2010. That same day, New United filed the first action (Docket No. L-5999-10) at issue in this appeal. It sought declaratory and injunctive relief —— including a request for temporary and preliminary restraints —— enjoining defendants Board of Education, the County, and Joseph DiVincenzo, County Executive from "taking any action to seize [New United's] property by condemnation pursuant to the Eminent Domain Act or other law." The Law Division denied New United's emergent application for an

order prohibiting the Board of Education from taking any steps in furtherance of condemnation. The court ruled that such request was premature because the Board of Education had not yet received approval from the Department to acquire the property. If approval were obtained, and if the Board of Education filed a formal condemnation complaint, the court held that New United could present all of its arguments in opposition to the condemnation in that forum.

Notwithstanding the absence of a counterclaim or other formal application, the court ordered New United to allow the Board of Education's contractors to enter the property in order to conduct testing that was supposedly needed to complete the Board of Education's land-acquisition application. This order —— characterized as an improper search warrant by New United —— required the Board of Education to give prior notice to New United and was conditioned upon the tests not harming the property. On August 23, 2010, after the Department had approved the Board of Education's application to acquire the land, New United refused to allow the Board of Education's appraiser (the same Mark E. Hendricks who authored the May 17, 2010 appraisal report) "to gain access to [New United's] [u]nit for valuation purposes."

On August 24, 2010, the parties appeared before the court to address the issue. The Board of Education's attorney represented that it wanted Hendricks to re-examine the property because the previous report "was not an appraisal for condemnation, [and] because [the Board of Education] didn't have the right to condemn prior to the [Department's] approval." New United argued that the Board of Education had not sufficiently demonstrated its entitlement to embark upon the exercise of eminent domain and continued its objections to Hendricks's inspection.

The court ordered New United to allow Hendricks to inspect the property and said that New United had a right to have its representative accompany Hendricks's appraiser during the inspection. New United's attorney stated, "[m]y client has no interest in participating in the appraisal."

On August 26, 2010, pursuant to another order of the Law Division —— also claimed by New United to be an irregular search warrant —— Mark E. Hendricks entered New United's condominium unit, but was barred from inspecting three areas that Dr. Pemberton reported as being occupied by tenants. The inspection produced no change in Hendricks's opinion of value, which was now memorialized in an August 27, 2010 "Certification of Value."

On August 30, 2010 the Board of Education formally resolved to authorize an offer of $4,850,000 for New United's condominium unit and passed other resolutions authorizing contracts in furtherance of the school-construction project.

The next day, the Board of Education's attorney forwarded a letter to New United notifying it that his client had voted to authorize condemnation of New United's condominium unit. He conveyed the Board of Education's offer of $4,850,000, indicating a preference to acquire the property through amicable means. Echoing the language of the Board of Education's letter of June 28, 2010, the attorney wrote, "[i]n the event we are unable to come to an agreement within 14-days from the day of this letter, we will assume that settlement by agreement cannot be reached and condemnation proceedings will, as a matter of necessity, be instituted." However, unlike the earlier communication, the attorney made no mention of possible environmental contamination and the reallocation of costs for remediation, if necessary.

That same day, New United filed a motion for partial summary judgment in Docket No. L-5999-10, requesting an order declaring that the Board of Education had "forfeited its right to condemn plaintiffs' property due to the [Board of Education's] manifest abuse of [New United] and violations of

the Eminent Domain Act and other law." Along with that motion, New United also applied for an order to show cause for temporary and preliminary restraints pending resolution of the motion for partial summary judgment.

At the September 3, 2010, case management conference, New United's attorney argued that his clients had a right to preemptively stop the condemnation because there was a "manifestly unconstitutional process in the works." The court repeated that such a request was premature because the Board of Education had not yet filed a complaint for condemnation. An injunction was not issued.

On September 2 and 9, 2010, New United's attorney wrote letters to the Board of Education's counsel criticizing Hendricks's updated opinion of value and the Board of Education's "egregious violations of the Eminent Domain Act." Enclosed with the second letter were copies of (1) New United's leases with third parties, including First Steps Services for Children, Inc. (First Steps); (2) an April 2008 appraisal by Caldwell Appraisal Services valuing New United's condominium unit at $26,000,000; and (3) documentary evidence that as of July 30, 2010, the zoning regulations for the Newark campus were amended to permit mixed-use development. The letter also questioned the intention of the Board of Education regarding

whether it planned to (1) condemn (and pay for) New United's leasehold interest in the campus's parking garage and (2) pay severance damages related to New United's ownership in an off-site development known as the West Market Plaza.

The Board of Education did not respond to these letters, and instead commenced its eminent domain action (Docket No. L-7474-10) on September 14, 2010. Along with the complaint, the Board of Education deposited $4,850,000 with the court and filed a declaration of taking. See N.J.S.A. 20:3-17 and -18.

On October 7, 2010, New United filed an answer to the condemnation complaint, with counterclaims and a third-party complaint. New United denied both that the Board of Education had authority to condemn the condominium unit and that $4,850,000 was a fair price. It impleaded the County, DiVincenzo, the Essex County Welfare Division of the Department of Citizen Services (Division of Welfare), four Division of Welfare officers, and two freeholders of the County, alleging (1) a conspiracy to violate New United's (and Dr. Pemberton's) constitutional rights and (2) the condemnation was in retaliation for the 2005 lawsuit and its concomitant orders requiring the County to remediate the campus.

On November 12, 2010, the Law Division dismissed New United's complaint in Docket No. L-5999-10 without prejudice

because it was mooted by both the condemnation action, as well as by the 2005 lawsuit, in which the court noted that New United's diminution-in-value claim was preserved against the County. New United filed a timely notice of appeal.

On December 17, 2010, the court heard arguments concerning the Board of Education's authority to condemn the condominium unit. First Steps supported New United's position that the Board of Education had not conducted good faith negotiations before filing the complaint. Additionally, it argued that the Board of Education failed to submit a relocation assistance plan on First Steps's behalf. First Steps claimed that the Board of Education had failed to conduct due diligence to learn what New United's tenants needed and how much the relocation would cost.

The court found that the Board of Education had the authority to decide what was in its best interest. It did not have to prove a need to condemn by way of a feasibility study. With respect to New United's bad faith claim, the court said that the objective purpose of the government action, and not the subjective intent of the actors, was the pertinent factor. Here, finding that the objective purpose was to construct a much needed school, there was no basis to find bad faith.

Consequently, the court held that the Board of Education was vested with the power to condemn the property and

accordingly it appointed condemnation commissioners to examine and value the condominium unit. However, it entered an interim stay, prohibiting any demolition, pending our determination whether to issue a stay until the outcome of the appeal.[2] On January 7, 2011, New United's motion for reconsideration was denied. This appeal followed.

II.

Despite the parties' rhetoric, the salient facts in this appeal are undisputed. The issue before us is simply whether a governmental agency's exercise of its rights under the Eminent Domain Act was in accordance with the statute. We review the law de novo and owe no deference to the interpretative conclusions reached by the Law Division. Aronberg v. Tolbert, 207 N.J. 587, 597 (2011) (citing Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995) ("A trial court's interpretation

[2] On February 14, 2011, we granted New United's motion to consolidate its appeals and issued a stay prohibiting the Board of Education from demolishing or otherwise damaging the property pending our final decision. On April 11, 2011, we modified the stay to bar demolition of any of the structures in question and to permit the Board of Education to enter the property, on reasonable notice, "for the purpose of inspecting, maintaining, or repairing the properties." We also invested the Law Division with authority, notwithstanding Rule 2:9-1(a), "to enter any appropriate orders to implement" our ruling "to the extent disputes develop regarding any action [the Board of Education] may wish to take within the scope" our decision.

of the law and the legal consequences that flow from established facts are not entitled to any special deference.")).

Our review of the record convinces us that notwithstanding New United's argumentative fervor,[3] only one of its contentions is persuasive. That argument, with which we agree, asserts that the Board of Education violated N.J.S.A. 20:3-6's requirement to engage in "good faith negotiations" with a condemnee before commencing an eminent domain action. Because the Eminent Domain Act provides uniform procedures to be applied to ensure that constitutional requisites are met and to "increase protection to the citizen whose property is condemned," we reverse the judgment in Docket No. L-7474-10. Cnty. of Monmouth v. Wissell, 68 N.J. 35, 40 (1975). On the other hand, the Law Division rightly disposed of New United's preemptive attempt to stifle the Board of Education's actions in Docket No. L-5999-10. As for the 2005 lawsuit, it may continue along towards its natural disposition.

[3] For example, New United's first point consists of mostly speculative arguments contending that the Board of Education's taking activities were pretextual covers for an unknown hidden agenda harbored by the County or as a means of saving the County untold dollars in repair costs. Its second point asserts that N.J.S.A. 20:3-17 is unconstitutional; we need not reach this issue because this appeal can be resolved on non-constitutional grounds. Randolph Town Ctr., L.P. v. Cnty. of Morris, 186 N.J. 78, 80 (2006) ("Courts should not reach a constitutional question unless its resolution is imperative to the disposition of litigation.").

Pursuant to Title 18A, the Board of Education has the power to "acquire, by purchase or lease, receive, hold, hold in trust and sell and lease real estate and personal property and may take and condemn lands and other property for school purposes in the manner provided by law relating to the taking and condemnation of property for public purposes." N.J.S.A. 18A:20-2 (emphasis added). Pursuant to Department regulations, "[e]very acquisition of land, whether by purchase, condemnation, or by gift or grant to be used as a school site, shall comply with N.J.A.C. 6A:26-7 and receive approval thereunder." N.J.A.C. 6A:26-3.13. If the Board of Education decides to proceed by condemnation, its acquisition is also subject to the provisions of Title 20, including the Eminent Domain Act and the Relocation Assistance Act, N.J.S.A. 20:4-1 to -22.

The Eminent Domain Act "sets forth the procedural framework within which the competing interests in a condemnation case are to be resolved. The statute details when and how a condemnation is to be commenced and continued . . . ." Twp. of W. Orange v. 769 Assocs., LLC, 198 N.J. 529, 537 (2009). "Included within [the Eminent Domain Act's] scheme is the mandate that a condemnor engage in bona fide negotiations with the owner of real property prior to filing a complaint." Id. at 538. Specifically, the legislation provides, in pertinent part:

> Whenever any condemnor shall have determined to acquire property pursuant to law, including public property already devoted to public purpose, but cannot acquire title thereto or possession thereof by agreement with a prospective condemnee, whether by reason of disagreement concerning the compensation to be paid or for any other cause, the condemnation of such property and the compensation to be paid therefor, and to whom payable, and all matters incidental thereto and arising therefrom shall be governed, ascertained and paid by and in the manner provided by this act; provided, however, that no action to condemn shall be instituted unless the condemnor is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee, which negotiations shall include an offer in writing by the condemnor to the prospective condemnee holding the title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated, and such other matters as may be required by the rules. . . . In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property. . . .
>
> [N.J.S.A. 20:3-6.]

This provision serves "'to encourage public entities to acquire property without litigation[,] . . . thereby saving both the public and the condemnee the expense and delay of court action.'" 769 Assoc., LLC, supra, 198 N.J. at 538 (quoting Cnty. of Morris v. Weiner, 222 N.J. Super. 560, 565 (App. Div.), certif. denied, 111 N.J. 573 (1988)).

The Eminent Domain Act further imposes on a government entity seeking condemnation the "overriding obligation to deal forthrightly and fairly with property owners in condemnation actions." Jersey City Redevelopment Agency v. Costello, 252 N.J. Super. 247, 257 (App. Div.), certif. denied, 126 N.J. 332 (1991). In other words, a public entity must abide the square corners doctrine in dealing with the target of its acquisition efforts. See F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985) (noting, among other things, that "in the condemnation field, government has an overriding obligation to deal forthrightly and fairly with property owners"). This mandate is "not of form, but of high moral principle for violation of which redress should be liberally given." Cnty. of Morris v. 8 Court St. Ltd., 223 N.J. Super. 35, 39 (App. Div.), certif. denied, 111 N.J. 572 (1988). Thus, the Eminent Domain Act provides a landowner the assurance that "government is treating them with absolute candor and fairness[,]" which only occurs with "full disclosure during negotiations of all the information upon which the government relies in making its offer." Ibid. Accordingly, courts strictly construe the Eminent Domain Act's jurisdictional prelitigation requirements and dismiss the complaint of a condemnor that has failed to comply with these requirements. City of Atl. City v. Cynwyd

Invs., 148 N.J. 55, 69 (1997) (holding that although the requirements of N.J.S.A. 20:3-6 may be waived by a condemnee, they cannot be dispensed with over the objection of a condemnee); City of Passaic v. Shennett, 390 N.J. Super. 475, 483 (App. Div. 2007) (holding N.J.S.A. 20:3-6's prerequisites jurisdictional).

Although the Eminent Domain Act does not define what makes a negotiation bona fide, see Town of Kearny v. Discount City of Old Bridge, Inc., 205 N.J. 386, 408 (2011) (citing State by Comm'r of Trans. v. Carroll, 123 N.J. 308, 315-16 (1991)), clearly it contemplates more than a mere offer and passage of time for acceptance or rejection. Weiner, supra, 222 N.J. Super. at 566. When government is unwilling or unable to comply with N.J.S.A. 20:3-6, dismissal of its condemnation complaint is not a product of a hyper-technical application of the law. See 8 Court St. Ltd., supra, 223 N.J. Super. at 39.

That having been said, both the square corners doctrine and the duty to negotiate in good faith are two way streets. See Rock Island, A. & L. R. Co. v. United States, 254 U.S. 141, 143, 41 S. Ct. 55, 56, 65 L. Ed. 188, 189 (1920) ("Men must turn square corners when they deal with the Government."). A property owner's failure to cooperate may release a condemning authority from the stern application of N.J.S.A. 20:3-6.

Carroll, supra, 123 N.J. at 323; see also, Cnty. of Monmouth v. Whispering Woods at Bamm Hollow, 222 N.J. Super. 1, 9 (App. Div. 1987) (holding, "it takes at least two to negotiate and the record should be reviewed with that in mind.").

New United's and the Board of Education's interaction between late June 2010 and August 17, 2010 (when the Department approved the land acquisition application) was an unwholesome courtship. Without a demonstrated authority to condemn during that period, the Board of Education could not have commenced an eminent domain action and accordingly, New United had no obligation to respond to informal offers or cooperate in what arguably was an ultra vires effort to acquire New United's condominium unit. It was not until August 30, 2010, two weeks after the Department's validation of the application to acquire property, when the Board of Education finally took official action (by adopting an enabling resolution) that it was actually in a condemnation-ready position to negotiate with New United.

Thus, our focus commences with the Board of Education's first properly-sanctioned offer to New United dated August 31, 2010, which gave New United fourteen days to accept or reject its terms. In that attorney-authored letter, the Board of Education offered $4,850,000 for New United's condominium unit, based upon Hendricks's March 12, 2010 report. The letter made

no direct reference to Hendricks's August 27, 2010 "Certification of Value," which expressed the opinion that there was "no basis to revise or otherwise change [his] opinion of Market Value for the subject unit nor any of [his] conclusions or opinions as contained in the original appraisal report." Moreover, the letter stated,

> The [Board of Education] is willing to consider any additional information you may wish to provide concerning the evaluation of the Property sought to be acquired and remains desirous of resolving this matter through bona fide negotiations with you.

New United's first response came on September 2, 2010, in a communication from its attorney. The letter advised the Board of Education that its offer would be presented to New United's board of directors at its next meeting on September 8, 2010. The letter also (1) offered to provide additional information to the Board of Education's appraiser, (2) demanded certain documents from the Board of Education, and (3) posed specific questions to the scrivener of the August 31, 2010 letter. These inquiries included (1) questioning why the Board of Education had eliminated its demand for remediation credits, (2) asking why the appraiser did not address the valuation impact, if any, of New United's leases with third parties, (3) demanding copies of the Board of Education's resolutions that touched and concerned the acquisition of New United's condominium unit, and

(4) requesting further information concerning the Board of Education's "land requirements" and its "need for the entire campus." Claiming a need for this information "to inform [New United] how to respond to the [Board of Education's] offer to purchase/threat of condemnation," the attorney indicated his intention to "pursue the pending litigation to stop [the Board of Education's] abuse of [New United]."

On September 3, 2010, at a joint case management conference in the Law Division relating to the 2005 lawsuit and the just-filed injunctive complaint, New United's attorney attacked the Board of Education for not engaging in bona fide negotiations due to its "refus[al] to consider the deteriorated condition [of the Newark campus] as something less than just compensation." The court discussed alternative measures to ensure that if condemnation were to be exercised, New United would be appropriately compensated, even if it meant that there could be two potential payors: (1) the Board of Education being responsible for the fair market value of the condominium unit as of the date of taking and (2) the County being possibly liable

for any proven diminution in fair market value caused by its actions that were the subject of the 2005 lawsuit.[4]

One week later, still before the expiration of the fourteen-day response period, New United's attorney sent a second letter to the Board of Education's counsel. In it, the attorney asserted that the Board of Education had forfeited its right to condemn the condominium unit "because of its egregious violations of the Eminent Domain Act." The attorney further argued that (1) the Hendricks's appraisal was stipulated to "not [be] a condemnation appraisal," (2) the appraiser improperly deducted $2,770,000 from the value based upon obsolete zoning restrictions and the inapposite existence of a master deed, (3) the appraiser inaccurately calculated the extent of economic obsolescence, (4) the appraiser incorrectly diminished the value based upon the condition of the property, which was allegedly caused by the inaction of the County, (5) the appraiser neglected to consider the effect of New United's leases with third parties, and (6) the appraisal was defective insofar as it failed to address New United's leasehold interest in the parking garage on the campus, as well as ignoring the valuation effect

[4] We are uncertain as to the legal basis for imposing liability upon the County. We need not address this issue, however, because it is not part of the appeal.

of the termination of such leasehold interest on a neighboring property owned by New United.

New United's attorney demanded that certain documents be provided to him to facilitate his client's consideration of the Board of Education's offer. On the other hand, the attorney provided the Board of Education with copies of five leases between New United and third parties and a copy of an April 2008 appraisal of the condominium unit estimating its market value to be $26,000,000. Regarding the appraisal, the attorney wrote that he was providing it "[t]o assist your appraiser in understanding the proper methodology for the accurate appraisal of [New United's] property."

The Board of Education did not respond to New United's constructive criticism or to the attorney's attacks on its authority to condemn. Instead, the Board of Education went ahead and filed its eminent domain action on September 14, 2010. On appeal, the Board of Education claims that the data supplied by New United was untimely, thereby obviating the Board of Education's need to either consider the information or respond to New United. This argument assumes, without any evidence in the record, that there was an urgent necessity to file the condemnation complaint on September 14, 2010.

We are convinced that the Board of Education failed to fulfill its statutory duty to negotiate in good faith. We appreciate that it was faced with an adversary that was actively challenging its very right to exercise the power of eminent domain. However, the record only reveals New United's overarching insistence that it be paid just compensation, and that it would be satisfied once that occurred. New United never expressed a stubborn reluctance to hold onto its condominium unit at all costs. If that were the case, or even something approaching such adamancy, we would agree that any negotiations regarding price would have been futile. However, New United expressly identified what it viewed as the errors and omissions of the appraiser's opinion of value, which needed to be addressed, or at least acknowledged, before the eminent domain action was filed. We will not speculate on what would have been the outcome if the Board of Education had responded to New United's letters. The Board of Education cannot fulfill its statutory responsibility to engage in bona fide negotiations by burying its head in the sand. Willful blindness does not satisfy the square corners doctrine.

The Board of Education's failure to respond to New United's submissions (e.g., the leases and 2008 appraisal), other than by filing the condemnation complaint, presents a fatal defect in

the Law Division's proceedings. Compliance with the pre-litigation requirements of the statute is jurisdictional, and failure of the condemnor to comply will result in dismissal of the condemnation complaint. Casino Reinvestment Dev. Auth. v. Katz, 334 N.J. Super. 473, 480-81 (Law Div. 2000).

We disagree with the unsupported conclusion of the Law Division that "[t]here were negotiations . . . . They tried, they weren't able to even come close." The record reveals nothing that remotely resembles bona fide negotiations by the Board of Education. Rather than review and respond to New United's documentary submissions that might have illuminated several errors in judgment by the appraiser, the Board of Education steeled itself for the litigation. That conduct is the antithesis of what the Eminent Domain Act requires. Whether the Board of Education's hasty filing of the condemnation complaint was causally related to the looming October 1, 2010 deadline for repairs is beside the point. N.J.S.A. 20:3-6 does not exempt from its coverage actions that might serve the interests of another governmental entity. "The condemning authority's obligation to conduct good faith negotiations does not end with the furnishing of a written appraisal." Weiner, supra, 222 N.J. Super. at 564.

Because we conclude that the Board of Education did not satisfactorily invoke the jurisdiction of the Law Division, we need not address the remainder of New United's and First Steps's arguments. In light of the foregoing, the judgment in favor of the Board of Education in Docket No. L-7474-10 cannot be sustained. The matter is remanded to the Law Division for the dismissal of the condemnation complaint without prejudice. If a new complaint is filed against New United, the Board of Education must engage in bona fide negotiations with New United. We affirm the dismissal of Docket No. L-5999-10 as its claims are moot.

Affirmed in part; reversed and remanded in part for proceedings consistent with the principles stated in this opinion. We do not retain jurisdiction.