

MEMORANDUM

TO: City of La Crosse
FROM: Attorney Phillip James Addis
RE: Audit Report – CRUSA/RUSH WI WEST

The following report is the detailed summary of my audit of the records and files of the CRUSA/RUSH WI West.

Please note that this report has not been accepted by the City of La Crosse or any committees at this time. The Exhibits to this report contain information such as names of minors, birthdays, tax identification numbers and other information which must be redacted, prior to a release as a public record or to any person not directly affiliated with the City of La Crosse.

Background as to Lease Property

The City owns approximately fifty (50) acres of land which was originally a salvage yard, housing and related uses by the Shistar Family. The City acquired the land through a contested condemnation in the late 1980s and early 1990s. The general basis of the condemnation was elimination of blight, future industrial use, potential highway expansion; and Northside flood remediation. The funds used to pay for the project were based upon future industrial development.

Background as to Prior Leases and Defaults

In April of 1997, the City entered into a Lease Agreement for the use of this land with the La Crosse Soccer Club for \$1.00 per year,¹ for fifteen (15) years, terminating on March 31, 2012. Under the agreement, the La Crosse Soccer Club was to make all improvements and do all maintenance. It was anticipated the land would not be needed for at least ten (10) years. The lease could be extended for additional one (1) year terms upon City Council approval. Under the terms of the agreement, no subleases to any other parties were allowed. This agreement is attached as Exhibit "A."

In October of 2003, the Lease was amended to state that no structural improvements were allowed without prior consent of the Board of Public Works. It also gave the City the option of taking control and ownership of any fixtures or improvements.² The amendment is contained within Exhibit "A."

¹ It has never been determined if the rent of \$1.00 per year was ever paid.

² In 2012, this interpretation was challenged by CRUSA who argued that it was always understood that the Soccer Club could remove any improvements, including sod. The claim was that the October 2003 amendment was to be rewritten. There is no written record of this.

In the fall of 2011, a group known as CRUSA (Coulee Region United Soccer Association) came forward as the successor to the La Crosse Soccer Club and requested a one (1) year extension of the lease from the City Council. This request was denied. The City Council at that time considered a non-renewal of the lease for the following reasons:

1. The largest number of users were no longer City residents and, therefore, there should be additional rent in the form of a nonresident surcharge;
2. CRUSA was subleasing the facility and collecting rental and use income without the consent of the City;
3. CRUSA was charging the schools for use of the fields without City consent;
4. CRUSA was hindering the use of the fields by the City recreation program and the Hmong New Year;
5. Proof of insurance was not being provided timely;
6. La Crosse Soccer Club failed to file personal property tax forms and pay the tax;
7. Fundraisers and special events were being held without the prior approval of the BPW or the City; and
8. The City was not contacted or asked for approval of the transfer of the lease to CRUSA.³

In September of 2011, the Council authorized a negotiating committee and our office was retained to assist with the matter. From September of 2011 through February of 2012, the City engaged in negotiations on a new lease agreement and attempted to obtain various financial and other records from CRUSA.

During the final part of the negotiations, CRUSA informed the City they were moving and only needed a one (1) year agreement. The terms of a one (1) year agreement were finalized by the parties, reviewed by the various City committees, CRUSA and two attorneys on behalf of CRUSA. The final agreement was sent out for signing in February of 2012, subject to approval by the Park Board on March 15, 2012.

A reminder letter was sent to CRUSA on February 24, 2012, that the lease was ending and there had been no response to the proposed lease. CRUSA had ceased all contact on the matter. A meeting was set for March 6, 2012, of the negotiating committee prior to the March 15, 2012, Park Board meeting to determine the status of the lease.

On March 2, 2012, CRUSA faxed a forty-nine (49) page document to the City, delivered to our office on March 5, 2012, making changes and objecting to the terms that had been agreed to over the past few months. A copy of the fax is attached as Exhibit "B."

³ CRUSA argued that even though they were all new people and new members with an expanded program, they were the same organization with a name change.

Eventually, a one (1) year Lease Agreement was signed and set to expire on October 31, 2013, which would allow CRUSA time to relocate to their new fields and take their improvements including the sod with them.

CRUSA decided not to move and in October of 2013, a new five (5) year agreement, expiring in November of 2018 was created by Larry Kirch and Dale Hexom and approved by the City Council. That is the current agreement in place and is attached as Exhibit "C."

The current Agreement provides in general terms:

1. Rent of \$1.00 per year;
2. Priority scheduling for the City Recreation Program and Hmong New Year;
3. No charge to the School District of La Crosse for their athletic programs since the School District and the City share recreational facilities at no cost;
4. Proof of insurance at set levels for CRUSA and any user of the fields, with the City named as an additional insured;
5. Any events, other than soccer games, practices and leagues require advance consent by the City;
6. No subleases without advance City consent, with approval authority being given to the BPW.
7. Concessions such as soft drinks, popcorn, programs and promotional items may be sold during CRUSA, City and school events.⁴
8. No assignment, transfer or amendment of the lease unless reduced to writing and signed by the City of La Crosse and CRUSA.
9. A nonresident charge of \$20.00 per nonresident with records to support the payment provided to the City on or before July 1st of each year, with payment due by July 15th of each year.

No other agreement or amendment to the Agreement has been approved by the City Council.

The Public Works Director, without approval of the City Council or the BPW, signed an agreement to pay \$3,500.00 twice a year to CRUSA for the use of the schools on the fields. Approximately \$10,500.00 to \$14,000.00 was erroneously paid to CRUSA, but once that was discovered as part of the audit, the BPW directed the payments cease since they were not approved by the City Council. The City has not been reimbursed for these expense payments.

In March of 2016, CRUSA submitted a proposed lease amendment allegedly as a result of negotiations with the City in the fall of 2015 for approval by the City Council. The City denies that there were any negotiations, but that some proposals were mentioned by CRUSA. There was no legislation to appoint a negotiating committee or to amend the current agreement.

⁴ The Agreement does not reference the right to sell alcoholic beverages.

The March 2016 proposal from CRUSA would have raised the rent to \$1,000.00 per year, removed the City Recreation program from free use of the fields, granted to CRUSA the full right to sublease and use the facility for any purpose without City approval and allowed charges to the School District of La Crosse.

Basis for Audit and Actions on the Item Referenced Below

The BPW did not consider the matter until July of 2016. Prior to that time, I was contacted about the current use agreement, potential defaults and options available to the City to review the lease, such as an audit.

On July 18, 2016, the matter was before the BPW and Ms. Hood, appeared for CRUSA asking for approval of the new amendment to the Lease set forth above stating it had been negotiated and approved by our office on behalf of the City. As this was not true, I objected to the statement.

The BPW went into closed session and reviewed the matter. The BPW came out of closed session and made the following resolution:

File # 16- 0634

July 18, 2016

A motion was made by Seaquist, seconded by Gilman, to convene in closed session to confer with legal counsel. The motion carried by voice vote. A motion was made by Seaquist, seconded by Gilman, to reconvene in open session. The motion carried by voice vote. A motion was made by Gilman, seconded by Seaquist, to invoke audit process provided in the current agreement. The motion carried by voice vote.

Our office was retained to do the audit.

Ms. Hood stated that I should contact Attorney Sean O'Flaherty and discuss the matter with him. We had the following discussion with respect to Coulee Region United Soccer Association (CRUSA) on July 21, 2016:

A. Issues to be Reviewed

1. Ms. Hood had stated that our office has been involved in this renegotiation of a new use agreement and that we had received copies of these documents commencing in the fall of 2015. I informed him that at no point had we ever received any information from him and the letters which I obtained from the City did not show that he had ever forwarded these letters to our office. He stated that was his error and that he informed Ms. Hood of the same and that she would not state that in the future. He felt that the agreement he proposed had been in line with discussions from the fall of 2015, but he was aware that there was no pending proposal to amend this agreement. His letter further claimed that the new proposed agreement had been e-mailed to the City Attorney, but it had never been sent to the City Attorney. He agreed that this was not done.

2. The Board of Public Works had a concern over a sublease to the agreement with the La Crosse Lightning and the \$3500.00 that had been collected for activities at the soccer fields. This was never approved by the BPW. I did state that there was a method for the Lightning to

have been approved which was merely to go to the Board of Public Works and obtain the approval as with other events. Attorney O'Flaherty stated that he was aware of that, but then the money just goes to the City and not to CRUSA. CRUSA wanted to keep the money.

3. Review the records related to the Association to determine any other activities and to verify the accuracy of amounts that had been paid to the City in the past.

4. Review the nonresident fee. The City has informed CRUSA in the past that though they were receiving nonresident fees for spring programs, that nonresident fees were due for all CRUSA programs including the fall events. As part of the records, the City is going to want a detailed identification of each and every participant to ensure that the proper nonresident fee has been paid. I pointed out that the Parks Department has asked for this in the past but has still had not received any record for fall activities.

Attorney O'Flaherty indicated they had all the necessary information and it would be provided to us. He also stated they were aware they had not yet paid the nonresident dues for this year which are due on July 1st. These would be forwarded to the City.⁵

I informed him that I would be sending him a letter detailing out the paragraph in the use agreement and the information which the City was requesting in order to do an audit of the records. He said there would be no problem in obtaining the records.

He stated that they still would like to go forward with an agreement similar to that for the Green Island Ice Arena so that the Association could expand the number of events and activities at the fields but still receive sufficient income to pay for the maintenance of the fields. If the City feels that they cannot allow CRUSA to retain the income that comes from these events, they will just schedule soccer events on these dates versus having other participants on the fields.

I informed him that our office has now been retained to work on this but that the first issue to be dealt with is the audit and any amounts due the City of La Crosse. The issue of a new agreement or an amended use agreement could be addressed possibly in the future but that this open issue needed to be resolved first.

A letter was sent to Attorney O'Flaherty detailing the items to be provided by August 15, 2016:

1. Income records for the years 2014, 2015, and through June 30, 2016, specifically showing detailed sources of all income. The City must be able to determine from these records the names of any persons or entities who have given funds or consideration to CRUSA. If you have detailed financial statements which contain this information, that would be sufficient.

2. Expense records for the years 2014, 2015, and through June of 2016. If you have detailed financial statements which contain this information, that would be sufficient.

⁵ These amounts were not paid until September 14, 2016, when the City refused to release the liquor license for a special event unless they were paid.

3. Participant records for the years 2014, 2015, and through June of 2016. If you have fall 2016 registrations, they would be helpful also. This is for any event hosted, sponsored or co-sponsored by CRUSA where all or a portion of the income for event was received by CRUSA. This should include any fall events for 2014, 2015 and 2016 (if available). Your clients did send an itemization for what they say is the Adult League for the fall of 2015, but the registration dates are for the spring of 2016. The Player Roster does not have dates so we do not know if these records are the fall of 2015 or the spring of 2015, or all of 2015. We would ask for copies of all participant/registration forms for these events.

4. Any State and Federal tax filings for the years 2014, 2015 and 2016.

A copy of the letter is attached as Exhibit "D."

A letter was received from Attorney O'Flaherty on August 12, 2016, with certain items. Those items were an adult-only list of members for two seasons and a partial financial statement for 2016. Copies of those documents are attached to this report as Exhibits "E," "F" and "G".

B. Missing Nonresident Fees

Since CRUSA did not provide a breakdown as to resident versus nonresident, our office was required to verify each address and determine if a nonresident fee was due to the City. A total of \$4,000.00 plus a later follow up of \$1,220.00 was determined to be owed by the BPW. This amount has now been paid.

C. Violations of Lease Agreement and the Sale of Alcohol

On September 13, 2016, we received an inquiry as to the issuance of a liquor license for a concert involving the sale of alcohol at the Field for Kids.

In reviewing this matter, there was no request to hold the event given to the BPW and there was no provision for the sale of alcohol. In addition, the City had no certificates of insurance on file for any users. The question was whether CRUSA could have a license given the unpaid debts for subleasing and nonresident fees, and failure to obtain permission to have the event or sell alcohol, and no certificates of insurance had been provided.

A letter was sent to Attorney O'Flaherty on this matter and is attached hereto as Exhibit "H."

Attorney O'Flaherty e-mailed me with a request for a call the next day. A phone conference was set for 09:00 a.m.

The following are the details of my conversation with Attorney O'Flaherty:

He claimed not to know about the event until recently. CRUSA claims that they spoke with Jared Flick,⁶ so they assumed it was all approved. Mr. Flick denied giving anyone permission to hold an event. I explained that CRUSA knows the

⁶ There seems to be a common theme that though the agreement calls for approval by the City, with agreed upon forms for submission to the BPW and written amendments, that CRUSA claims all of these violations were consented to verbally by someone from the City. There is no way to verify the veracity of these statements.

procedure and there was no way it can be argued Jared waived notice on behalf of the City. Attorney O'Flaherty agreed and stated he told CRUSA they should have gotten advance approval.

As for the money, he thought he had written to me that any funds would be paid when the audit/review was completed. (There is no letter to this effect in my files.) I stated they must pay the money outlined in the letter to receive the license.

He asked if the City would use this event to default the Use Agreement. I stated that there is no decision made at this time on how to proceed.

He asked why I sent the letter. I stated the City was trying to work with CRUSA even though CRUSA did not give proper notice. The goal was to give CRUSA the option to hold the event, knowing that if they did, it could still be considered a default.

He stated the money and certificate of insurance would be over today.

The required amounts were paid and the certificates of insurance provided.

On September 16, 2016, I spoke with Attorney O'Flaherty. He asked if I knew when the City would be completing the audit and also deciding on the lease proposal. I told him he has not finished sending me the records and, therefore, I could not answer that.

He informed me they were looking at new location and if they cannot have the lease proposal they requested, they would be moving. They feel the restrictions placed by the City prevent them from raising the necessary funds to make the program grow and have the field be a success. They went out and recruited the La Crosse Lightning and then had to turn the money over to the City. The concert would be a major event, but may be a violation because they did not have advance permission. This is too restraining on their program.⁷ I stated the City was not going to consider a new lease at this time.

D. Missing Financial Records

On September 19, 2016, the following e-mail was sent to Attorney O'Flaherty:

Sean,

In looking at the documents attached to your August 12, 2016 letter, I see only one financial statement. If I am reading it correctly, it seems to cover July 1, 2015 to June 30, 2016.

In my letter, I requested 2014, 2015 and 2016. If the fiscal year for CRUSA is July 1st to June 30th, then I would still need July 1, 2014 to June 30, 2015 and July 1, 2013 to June 30, 2014 to cover the entire time range in question.

⁷ Around this time a new link appeared on their web page or Facebook page about relocating to their new facility.

You may e-mail me these to me or send them to me on a flash drive.

On September 19, 2016, he stated he would get those to me as soon as possible. On September 30, 2016, the 2014 and 2015 tax reports arrived but no other documents.

Given Attorney O'Flaherty's comments as to demanding a new lease and that CRUSA was planning to move, the matter was placed on hold by our office since it appeared the lease was not going to be extended by CRUSA.

Our office received two letters in November and December asking about the audit and the new lease; however, the balance of the records were never received. These statements about a new lease conflicted with their prior statement.

E. Assignment of Lease to RUSH WI West Without City Consent

On or about January 15, 2017, our office received a call that CRUSA was out of business. A search of public records and websites found a letter stating that CRUSA had turned over operations to RUSH WI West. In addition, there were postings thanking CRUSA for all of their hard work and looking forward to the future with RUSH WI. Copies of the letter and posts are attached hereto as Exhibit "I" and "J."

Records provided subsequently show that the transition had occurred around June of 2016, though this was never reflected in any correspondence with the City since all communication through December of 2016 had referenced only CRUSA.

This raised the following additional concerns: (1) Had the lease been assigned without City consent? (2) Who was the new organization? (3) Were they a group of soccer parents helping their kids or had it become more of an amateur sport similar to the Chill or the Loggers? (4) Who was now in charge? (5) Was insurance being provided by the new group?

A meeting was held with City staff and City Council on March 7 and 9th to update the Council on the current status of the audit and these new issues.

On March 10, 2017, I spoke with Attorney O'Flaherty and he informed me that RUSH WI West was the same company as CRUSA but they changed their name. He provided me with a document showing the use of the new name starting in June of 2016. A copy of that document is attached as Exhibit "K."⁸

F. Charges for Parking Without City Approval

On March 14, 2017, Attorney O'Flaherty sent a letter asking why the right to charge for parking was being denied. He claimed that this was allowed by the BPW on prior occasions. A copy of that document is attached as Exhibit "L."

⁸ This is the same as occurred in the prior lease where CRUSA absorbed La Crosse Soccer Club and took over the Agreement without City consent.

After reviewing all of the agendas for the BPW with respect to CRUSA since 2014, I spoke with Attorney O'Flaherty. I asked him how much they made in parking since the 2016 partial report showed about \$13,000.00. He thought that was correct. We discussed that they had been charging for parking for at least three (3) years. I informed him that in 2015, our office had issued an opinion that CRUSA could not charge for parking without BPW advance approval and that requests for parking had never been voted on by the BPW. He was sure it had and I asked him to provide me with copies of the written requests to allow charges for parking. As of this date, nothing has been received.

G. Missing Personal Property Tax Reports

On March 17, 2017, Attorney O'Flaherty provided the missing 2016 personal property tax return, 2017 personal property tax return, and the delinquent taxes were paid to the City.

H. Delay in Producing Records; Records Still Missing

On March 20, 2017, a letter was sent to Attorney O'Flaherty as to the remaining missing items to complete the audit. These were:

1. Complete rosters, with full names and addresses of all CRUSA and/or RUSH WI West registrations for the entire season of 2014, 2015 and 2016. Include all adult leagues. This must include all spring, summer and fall events and tournaments.
2. Complete detailed end of the year financial statements for 2014, 2015 and 2016. We have only been given the first six (6) months of 2016.
3. Copy of the 2016 Tax Return.
4. Copies of both the 2016 and 2017 La Crosse Lightning agreement.
5. Concession/lease agreement with the Food Truck Pizza Vendor.
6. A detailed explanation of the outside rental income line of \$6,868.00 in 2014, and \$7,830.00 in 2015 shown on the tax returns. There are no BPW minutes reflecting approval of events for these dollar amounts.

I. Notice as to Fees and Costs of Audit

The letter also contained the following reminder: Please provide these documents to our office within ten (10) days of the date of this letter. Please ask CRUSA to sort the rosters by year and time frame. The last set of records did not do so and it requires a large amount of time to sort them. CRUSA should designate the nonresidents for the City and not ask the City to make the computations. Under the Use Agreement, the City may charge CRUSA for doing this work when the audit determines the amount owed is in excess of \$500.00. At this point, CRUSA has had to pay over \$7,500.00, so that clause could be invoked. The more complete records that CRUSA can provide, the less amount the City needs to do to complete the audit.

A copy of that letter is attached as Exhibit "M."

We did receive on April 3, 2017, the 2014, 2015 and 2016 financial statements, but no tax returns for 2016 were ever received. The adult rosters match the prior submission, but there is no way to verify any of the submission for nonresident fees for minors for 2015-2016 season. This is approximately 330 persons of which, based upon prior reports 70%, are not residents of the City. Since CRUSA/RUSH cannot provide the records, this is an approximate \$4,000.00 loss to the City.

J. Closing of Audit

In May, the Council and the BPW authorized me to send a final close out letter summarizing the issues for the City and giving RUSH an opportunity to reply. This letter to Attorney O'Flaherty is attached as Exhibit "N." Even though the City still had not received all of the records it had requested or been compensated for all the missing nonresident fees, it was decided to close the audit.

Almost one (1) year to the date which this matter started, the City closed the audit with the directions set forth on the resolution.

File # 17-0295

July 17, 2017

A motion was made by Ostrem, seconded by Padesky, to convene in CLOSED SESSION pursuant to Wis. Stat. 19.85(1)(g) to confer with legal counsel. The motion carried unanimously by roll call vote. A motion was made by Tutenwald, seconded by Padesky, to reconvene in OPEN SESSION. The motion carried by voice vote. A motion was made by Ostrem, seconded by Padesky, to close the audit subject to conditions and move forward with negotiations with RUSH. A final audit report containing the outstanding issues shall be submitted. In order to move forward, the following conditions shall be addressed in the negotiations: -Establish pay back to the City of the outstanding parking amount of \$42,000. -Parking for tournaments and jamborees. -Establish system to lock-in dates as soon as possible for city soccer program and Hmong New Year. -No charge to high schools for fees, including lighting or PA systems. -Full payment to City of audit costs may be included in amount paid to the City, amortized through agreement. -Residency records - address administrative issues and tracking; eliminate the burden through negotiation. Requirement of a resident fee is for the negotiating committee to determine. The motion carried by voice vote.

K. Summary

Based upon the above, it is our opinion on the defaults as follows:

1. The City was not given priority scheduling for its recreational program for the time per the terms of the Agreement, nor was the Hmong New Year given priority scheduling.

RUSH has stated that any errors were unintentional and will be corrected in the future.

2. RUSH/CRUSA subleased to groups such as La Crosse Lightning in 2016 without the prior consent of the BPW.

This was admitted, the 2017 agreement was approved by the BPW.

The City did assess and collected \$3,500.00 for the 2016 season in September of 2016.

3. RUSH/CRUSA held a fundraising event which involved the sale of alcohol without the prior consent of the BPW in September of 2016.

4. RUSH/CRUSA did not provide records for the determination of nonresident fees or any payment for the same in July of 2016.

Records reviewed as part of the audit did determine that for adults, there were total nonresident fees due for adults for the 2015 and 2016 season in the amount of \$5,220.00. These amounts have now been paid.

Detailed records for minors for the 2015/2016 season were not provided so no determination can be made as to the amounts due. It is estimated that the additional fees could be \$4,000.00. No assessment was made by the BPW for this number.

5. RUSH/CRUSA did not receive approval from the BPW to charge for parking.

An estimated assessment for this number was set at \$42,000.00 by the BPW and accepted by RUSH/CRUSA at the meeting on July 17, 2017.

6. RUSH/CRUSA did not provide all the records requested under the audit.

We still have not received the 2016 tax return or detailed records of nonresidents. This is moot as the audit has been closed by the City.

7. Certificates of Insurance are required from all users and RUSH/CRUSA naming the City as additional insured under the terms of the Agreement.

The certificates provided to our office have expired and we have not been provided with updated Certificates of Insurance.

8. CRUSA/RUSH failed to file personal property tax reports and pay the taxes associated with the same.

As of March of 2017, the missing reports have been filed and the amounts due have been paid.

9. The agreement provides for an assessment to CRUSA/RUSH for fees of the audit if the amount due is determined to exceed \$500.00.

The City has collected as a result of the audit an additional \$8,720.00 as detailed above, additional nonresident fees for the 2016/2017 season paid directly to the

City, plus the fees for the 2017 La Crosse Lightning season. Additional amounts for parking fees not approved by the City in the amount \$42,000.00 have been left to be determined as part of the lease negotiations. This well exceeds the \$500.00 figure.

The City has assessed an estimated amount of \$7,000.00 for costs of the audit as of July 2017. It should be noted that this does not include the costs of preparing the final audit report of \$1,160.00 which have not been billed, since the audit has not been accepted by the City of the costs to redact and prepare a clean copy for public release. Our office, including meetings with all parties, the City, its committees, public hearings, review of records, etc. has billed approximately fifty (50) hours to the City to date on this matter, which equals \$7,250.00.

10. The lease was assigned to RUSH WI West without the prior consent of the City.

To close the audit, the BPW accepted RUSH WI West as the successor to CRUSA.

This concludes the results of my review in this matter. This report is submitted to comply with the resolution set forth on July 17, 2017. We have not been informed which committee we are to present our final report to.