

To: The Fort Wayne Senate

From: George W. M. Bullion, Chairperson,
IPFW Budgetary Affairs Subcommittee

Subject: Questions and answers pertaining to the development of the McKay property - for information only

Date: March 27, 1998

At the start of the current academic year, it was brought to the attention of BAS that there were rumors floating within the IPFW community regarding the development of the McKay property. BAS decided early on in the academic year that it would look into the financial aspects of the development of the McKay property.

Attached is a copy of a series of questions that the BAS submitted to Chancellor Wartell and Vice Chancellor Branson pertaining to the development of the McKay property and their answers to those questions. The questions and answers are hereby being transmitted to the IPFW Faculty Senate **for information purposes only**.

The BAS had requested certain documents pertaining to the McKay property but was denied access to these documents since the administration's position was that the requested documents were not subject to public disclosure rules. The answers in the attachment were submitted to Chancellor Wartell and Vice Chancellor Branson for a review of the accuracy of the answers. It is the position of BAS that the answers fully and accurately reflect the facts as they have been represented to us by the administration. At the very outset of the meeting in which the questions were directed to the administration they were informed that there was a possibility that the questions and answers would be transmitted to the Fort Wayne Senate for information purposes.

The BAS at its Friday, March 20, meeting decided to transmit the questions and answers with the understanding that the mere act of transmittal does not constitute an endorsement of the direction of the development of the McKay property. While BAS's interest was exclusively in the financial aspects of development of the property we did think that the members of the Fort Wayne Senate would have an interest in all of the information obtained through our inquiry.

Attachment: Questions/Answers Regarding Development of McKay Property

**Questions/Answers Regarding
Development of McKay Property
10 a.m., February 25, 1998**

Those in attendance:

Members of BAS: George Bullion, Tom Guthrie, Ray Pippert

Members of administration present: Chancellor Wartell, Vice Chancellor Branson

The session went from approximately 10:05-11:50 a. m. with a ten minute break at 11:10 a. m. The format for the session involved BAS members asking questions and either Chancellor Wartell or Vice Chancellor Branson providing answers. Frequently one would give an answer and the other would elaborate on the answer or provide a correction or addendum to the answer.

The administration's response is italicized for each question. The answers are not verbatim but instead represent the BAS members' best efforts to accurately convey the administration's answer.

Some general questions:

1. Is there a master plan for the development of the McKay property?

There is only a one page written concept statement regarding the development of the McKay property. Basically, the vision at this time is that the site will be developed to further youth education through sports. The total acreage being developed at this time is about 85 acres. This includes approximately 21 on the west side of the canal (buildings, parking lots, and roads) and 64 on the east side (all soccer fields). This leaves a total of 64 acres to be developed although there was a commitment not to develop the wooded portion (exact acreage unknown) of the property along the west side.

The breakdown is as follows:

<i>Acres leased for development -----</i>	<i>5.15</i>
<i>Acres for outdoor soccer fields, roads, and parking -----</i>	<i>80.00</i>
<i>Total of current planned development -----</i>	<i>85.15</i>
<i>Acres left for development -----</i>	<i>66.85</i>
<i>Total acres -----</i>	<i>152.00</i>

At the present time there is some consideration being given to the possible location of an Agricultural Center by Purdue--Lafayette (involves research, teaching, and service) on the property. A facility similar to the envisioned one is already located at Vincennes University. The facility is "concentrated." That is, it doesn't consume substantial acreage. It is not a research farm. This might allow for the first two years of some agricultural degrees being offered here. Purdue asked for \$200,000 funding for this Center during the 1997-99 biennium and to date it has not been funded and there is little hope that it will be funded in this short session of the Indiana General Assembly.

If unanticipated (at this time) opportunities arise later, they can be accommodated in the undeveloped portion.

2. Who holds title to the McKay property?

The title to the McKay property is held by the trust (Lincoln, Foellinger, Raker, Cole Foundations) that purchased the property. Land to be developed is transferred to the Indiana-Purdue Foundation before the development begins. For instance the foundation already has the deed to the outdoor field area. The IP Foundation holds title to the property until such time as Indiana-Purdue either builds on the property or until title for a parcel (including improvements) is transferred to Indiana-Purdue.

Neither Chancellor Wartell nor Vice Chancellor Branson sits on the IP Foundation board.

3. Who signs contracts for leases and other legal documents pertaining to the development of the McKay property?

The IP Foundation.

4. What is the grand vision for the development of the McKay property?

Answers in (1).

5. When private developers sign contracts relative to the McKay property, do they request anonymity? If yes, why?

Generally, they don't. The only developer involved has not requested anonymity.

6. When contracts are signed with private developers of the McKay property, what kinds of conditions do they set forth?

Do not remember any conditions that were set forth with respect to the developer of the indoor soccer facility other than the items stated in the lease, which relate to their rights as the lessee. There are no conditions, restrictions, or stipulations specified by the developer of that facility.

7. What are the financial arrangements used by private developers regarding their commitment to the McKay property?

The developer of the indoor soccer facility has a lease for the land on which the facility is sited. The IP Foundation has not placed the land at risk (if, for example, the developer were to default on a loan—assuming such a loan exists). The land can never be lost.

The facility and land must be used for sports and recreation activities. Any use of the facility and land for other than these purposes must be approved by the foundation.

8. When donors, particularly foundations, make gifts toward the development of the McKay property, do they request anonymity? If yes, why?

Can't think of any in this particular case, although as a matter of policy, we are not excited about such a list being published. There are a variety of reasons some benefactors prefer that their bequests not be known.

9. Are the names of the donors to the development of the McKay property and the amounts of their gifts available for public perusal?

Would really need to check with the Office of Development. (The Chancellor and Vice Chancellor were willing to share this information with the BAS representatives but they did not want to see the names in print. The members of BAS did not ask to have the names revealed, although in response to a later question and given previous information that had been presented, three of the approximately eight donors of the \$1.7 million for the development of the outdoor soccer facilities and the infrastructure were revealed.)

10. Is an annual audited statement of the IP Foundation (or other foundations that are involved in the financing of the McKay property) available. If no, then why not?

Purdue University Internal Audit audits the foundation. This audit is not available for public disclosure since the foundation is not a public agency.

The IP Foundation is just a transfer or holding organization. It was formed to buy land. Once a building is placed on the land then the building is turned over to the university. The foundation originally gave the university the land under each building as they were built. In 1992 or 1993 the foundation gave all the land it owned on the east side of the river to the university. Also, the foundation can pay for certain items that the university cannot purchase (i.e. food and beverages).

The Trust (Lincoln Foundation, Raker Foundation, Foellinger Foundation, and the Cole Foundations) that purchased the McKay property leased the land to the IP Foundation, and now the IP Foundation is responsible for the land on which the development has occurred.

11. Have any operational funds or resources been used to support the McKay farm to date?

IPFW has been doing some mowing on the property over the years it has been in the trust and it has done some minor upgrades on the barn that it uses for storage purposes. The expenditures have been a very small amount and have come out of the Physical Plant's budget.

12. Are there any plans to use operational funds or resources to support the McKay farm in the future?

There are some plans to upgrade the barn; however, it should be noted that IPFW Physical Plant uses the barn for storage.

13. In your opinion is it legally possible to use operational funds or resources to support the McKay farm?

Depends on the kind of facility. If the facility were being used for educational purposes, then probably yes. Basically, it would be possible to use IPFW's resources only if the expenditure has a programmatic tie.

14. What has been the funding source for routine maintenance at the McKay farm?

Basically has come from the Physical Plant's budget.

15. Who has performed routine maintenance at the McKay farm? (What about property insurance?)

Physical Plant (see 11, 13, and 14). In a later question the matter of insurance, mostly liability, came up and it was indicated that this is picked up by IPFW but that it has not increased as a result of the recent development.

16. If yes to 15, are there specific transfers from, say, the Foundation to IPFW maintenance?

No.

17. Who paid for the bridge and access roads to the soccer facility?

This was paid for with \$300,000 of funds from the \$1.7 million raised for the development of the outdoor soccer facility and a limited amount of funds provided by the indoor soccer facility developers in the extension of the parking lot.

The parking lot extension goes beyond the leased land in an area that is designated for parking for the outdoor fields. It will be used for both the indoor and outdoor fields.

18. Cost, source of funds, etc. for 17?

Covered in 17.

19. Was the infrastructure competitively bid? How many bidders were there?

While the answer was yes, the IP Foundation let the bid. There was IPFW staff time involved in developing the project for bidding. Didn't remember the exact number of bidders, but it was more than one.

20. Review the terms of the lease with the private investors.

a. payments-

While the foundation doesn't want to publicly disclose the annual payment under the lease for the 5.15 acres under the building and parking, the administration is confident that the payment is a fair market price for similar land in the Fort Wayne area.

The lease payment is adjusted every seven years or so for inflation.

b. lease length-

The lease runs for 30 years.

The lease has been structured in such a way that the IP Foundation is held totally harmless in the case of default. Discussion occurred relative to the "what ifs" in the case of default and it was the belief of the administration that the IP Foundation would be able to exercise control only over the land and that the facility would pass to the creditors. The creditors, in turn, could operate the facility, sublease the facility, remove the building, or turn it over to the IP Foundation which then would likely turn it over to IPFW. However, other parties would have to honor the conditions for operation contained in the original lease.

The land already belongs to the foundation. The facility will become the property of the IP Foundation.

- c. Maintenance of outside infrastructure and access (is this stipulated in the lease?)

The developer has the responsibility for maintaining the property under lease but not the access. When asked as to what happens in 20-30 years regarding maintenance and upkeep since the facility reverts to IPFW at that time, the Chancellor indicated that while there certainly could be a problem, the court of public opinion on which the developer earns revenue will dictate that the facilities be kept in reasonable condition. Also, it is possible that the developer could renegotiate a lease with IPFW on the site that would then involve both land and facilities. The fact that they are leasing both land and facilities at that point would involve a substantial increase in rent.

The lease payment to the foundation will pay for the lighting of the access and upkeep of the infrastructure.

- d. Priority access for IPFW?

IPFW does not have priority access on the use of the facilities but for instance the IPFW baseball team is working out in the facility now free-of-charge and presumably the tenant will be willing to accommodate IPFW wherever possible.

The soccer team has worked out a "trade" where the team gets practice time in return for providing officials, etc.

- e. How was the annual rental fee determined?

This was done basically through contacts that Vice Chancellor Branson made with a local banker and limited information from within the real-estate community.

*A legal opinion was eventually rendered (**inurement**) that stated that the rate was a fair rate. The attorneys did not render an opinion on the fairness of the rate but rather rendered a legal opinion regarding the matter of conflict-of-interest, etc. The document was primarily for the benefit of the IP Foundation rather than any officers on this campus. Since the inurement document is not a public document, it will not be made available to BAS.*

- f. What is the projected life for the facility?

No specific estimate has been made. Given the kind of facility, with reasonable upkeep, it is expected to have a use life beyond the 30-year lease.

- g. Who paid for the utilities infrastructure? sewage, water, electricity, gas?

See answer to (17) above.

- h. We understand that the private investors are incorporated as an LLC called Indoor Sports Enterprises (ISE). Can you confirm?

This was confirmed. When asked about the financing of the facility, Vice Chancellor Branson indicated that he did not have any first-hand knowledge regarding the lessee's financial arrangements for the facility.

- i. Is the corporation for-profit or not for profit?

While the administration was unsure, they thought that it is a for-profit corporation.

- j. Assume a prospectus was issued?.

Assumption is that a prospectus might have been issued but the administration has not seen one nor does it have any knowledge as to whether one exists.

- k. Can we get a copy of the prospectus? Public document?

A copy is not available through the administration.

- l. Has anyone from IU, PU, or IPFW purchased stock in the corporation either directly or indirectly or been given stock either directly or indirectly?

While there are no restrictions and certainly no knowledge as to whether anyone in the university community has purchased stock in the corporation, any member of the university community would have to file a conflict of interest statement (at least they are supposed to).

- m. Has anyone from (l) benefited directly or indirectly?

The administration has no knowledge that anyone from IU, PU, or IPFW has benefited either directly or indirectly from the development of the McKay property to-date.

21. Who is going to finance the building of the outdoor soccer fields?

This is being financed by the approximately \$1.4 million remaining of the \$1.7 million raised for this purpose. \$300,000 has been spent on infrastructure development.

Funds raised externally. The administration does not expect to be able to get the National Guard to do any of the work on the facility as they had once hoped. There is some effort perhaps for the local heavy-equipment operators group (actually union to which the group belongs) to get some donated time.

IPFW operational funds can't be used.

IPFW is going to build the soccer fields.

22. What organization is going to manage the outdoor soccer fields?

At the present time the administration is looking at a couple of different models involving the operation of the outdoor soccer facilities. One is for IPFW to own and operate directly and the second would involve "outsourcing" to a lessor in much the same way as has been done with the indoor facility. No decision has been made in this regard yet.

Leasing?

Nothing available on this at this time.

Scheduling?

Detail not yet addressed.

IPFW priority?

There are no plans for IPFW to use these fields since the fields on campus should meet its needs.

Who will get the revenue?

Depends on management structure described above. If IPFW owns and operates the facilities, then it will receive the revenue. However, there is no projection available as to the amount of revenue that might be available. General impression was that there would not be very much revenue available under any ownership or operation scenario.

Who will get the concession revenue?

This is a question that cannot be answered. The indoor facility is providing most of the concessions and use of their restrooms. For tournaments, both portable restrooms and concessions will have to be provided.

23. What is the estimated cost of the outdoor soccer fields?

Will be financed from the \$1.4 million remaining from the \$1.7 million raised for this purpose.

24. Is the financing arranged?

Yes.

25. Who will maintain the outdoor facilities?

Depends upon the management arrangement.

26. Will construction be competitively bid?

The fields will be competitively bid.

27. Does IPFW carry a separate insurance policy on the McKay farm?

No. It is a part of IPFW's regular insurance package.

28. How is liability insured?

Covered under Purdue's overall liability policy. Thought that they self insure up to some point and then insure against catastrophic liability.

There will be no additional (liability) charge with the construction of the outdoor fields. The land is covered under Purdue's coverage. We pay separately for the amount of the charge. It is not part of the management fee.

29. Has cost of liability coverage changed?

No it has not changed.

30. What about security and security costs?

Both IPFW and the lessee of the indoor soccer facility will provide for security. Also, the City of Fort Wayne's Police Department provides and will provide assistance.

31. Are any of the donors to the outdoor soccer facility to receive special consideration?

The administration mentioned that Fort Wayne Community Schools gave \$100,000 and for this the soccer team at Snider would be provided with practice fields as well as a place to play their games.

Question was raised as to whether this is in perpetuity, and the response was that *the answer to the question was being negotiated currently.*

Essex Corporation also received permission to construct historic markers along the canal as a condition of its gift.

It was in this discussion that it was mentioned that there are approximately eight donors that accounted for the \$1.7 million.