

# Judge asked to decide if FMMA can use impact fees from 2006-2011

By [Joe Callahan](#)

Staff writer

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Francis Marion Military Academy wants a circuit judge to decide whether the charter high school is entitled to its share of impact fee money the School District collected between 2006-11.

Francis Marion filed a complaint seeking a “writ of mandamus” late Thursday. Local attorney Lewis Dinkins represents the school.

The complaint states Francis Marion officials believe the school has the right to its share of the fees, which are imposed on new residential construction. The money offsets the cost of building schools, acquiring land and purchasing items needed due to school population growth.

Charles deMenzes, a Francis Marion board member, maintains the charter school has been growing since it opened in 2008-09; therefore, the school meets the “growth” criteria cited in the impact fee ordinance.

The school opened with 40 students in fall 2008 and now has roughly 150.

But School Board Chairman Bobby James said Francis Marion was not launched because of district overcrowding. Instead, it was launched as a specialty military charter school.

“The cadets attending Francis Marion could easily be absorbed back at their” zoned schools, James said. James said the ordinance is clear: The impact fee money can only be spent on growth.

After the recession hit, growth ceased overall in Marion County. The district suspended impact fee collection for the past three years.

In 2010-11, the last time the school impact fee was imposed, the charge was \$2,166 for multi-family housing units, \$3,967 for single-family homes and \$3,461 for mobile homes.

DeMenzes said the School Board recognizes that charter schools are public schools and thus are eligible.

If the judge rules in favor of Francis Marion, and the School Board refuses to hand over the charter school’s portion of the funds, then Francis Marion could file a lawsuit.

“We did not want to go into this with our guns blazing,” deMenzes said. “We needed a judge to decide whether we do have access to these funds.”

Francis Marion officials would use the impact fee funds to help pay its land mortgage and other items related to school growth.

The school is currently leasing property owned by the College of Central Florida Foundation at 3443 SW 20th St., the one-time location of Hale Academy.

Francis Marion officials hope to build a \$2 million campus on its own land just west of Northeast 19th Avenue, about a mile north of Northeast 14th Street, in about three years.

James said Friday that the board must follow the ordinance and that he believes Francis Marion does not meet the qualifications to receive the funds.

“What about the other two charter schools?” James asked, referencing Marion Charter School and McIntosh Area School.

“If Francis Marion qualifies, then so would those other schools.”

Board member Ron Crawford, who was board chairman last year when Francis Marion first asked for its share of the funds, said the issue is not about sharing. The district has several million dollars worth of unused impact fee funds.

Crawford said the ordinance is clear that the district cannot legally hand over funds to Francis Marion, and not because it is a charter school.

Crawford said when Francis Marion opened that the district had plenty of open seats at most of the mainstream high schools. Therefore, Francis Marion was not needed to help the district with overflow students at other high schools. Therefore, Francis Marion was not opened because of the impact of growth, and impact fees must be spent only on growth-related items, he noted.

“I don’t want the board to be sued by the taxpayer,” said Crawford. “If we gave Francis Marion access, I think we would open ourselves up for another lawsuit.”

The money in question is from school impact fees collected from 2006-2011. The problem is that school enrollment growth leveled off several years ago, holding at about 42,000.

Without growth, district officials have been focusing on buying land for future schools. Francis Marion officials wonder why they can’t get access to some of the funds to pay off their land mortgage, as well.

Recently, the board purchased 92 acres for a future school and some sidewalks at Legacy Elementary. That leaves the district \$366,000 to spend by Sept. 30; \$2.48 million to

spend by 2014-15; \$1.17 million in 2015-16; \$958,161 in 2016-17; \$220,642 in 2017-18; and \$41,886 in 2018-19.

The request for writ of mandamus cites a letter that School Board attorney Beverly Morris sent to the board last May. Morris warned the board there was a gray area in the law.

“I wanted you to be aware that charter schools that are specifically ‘created to mitigate the educational impact created by development of new residential dwelling units’ may be entitled to ‘some of or all of the educational impact fees required to be paid in connection with the new residential units,’ ” wrote Morris.

In the letter, Morris concluded that she believed none of the three charter schools were built to help the district with growth.

Crawford said if the judge does rule in Francis Marion’s favor, the judge will also have to rule how to calculate the Francis Marion’s fair share.

From 2008-09 to 2010-11, the only three years Francis Marion was open during the impact fee collections, the district only received \$1.2 million.

Crawford said he wasn’t sure that amount would be divided by the number of Marion County students, roughly 42,000, and then Francis Marion would get its per-student share.

And if the judge rules in Francis Marion’s favor, Crawford said, he wants to know whether the district also will be required to pay impact fee money to the other charter schools.

“McIntosh (Area School) just paid for new buildings out there. I guess they would deserve their share,” he said. “We will just have to wait and see what the judge decides.”

*Joe Callahan can be reached at 867-4113 or [joe.callahan@starbanner.com](mailto:joe.callahan@starbanner.com). Follow him on Twitter at @JoeOcalaNews.*

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