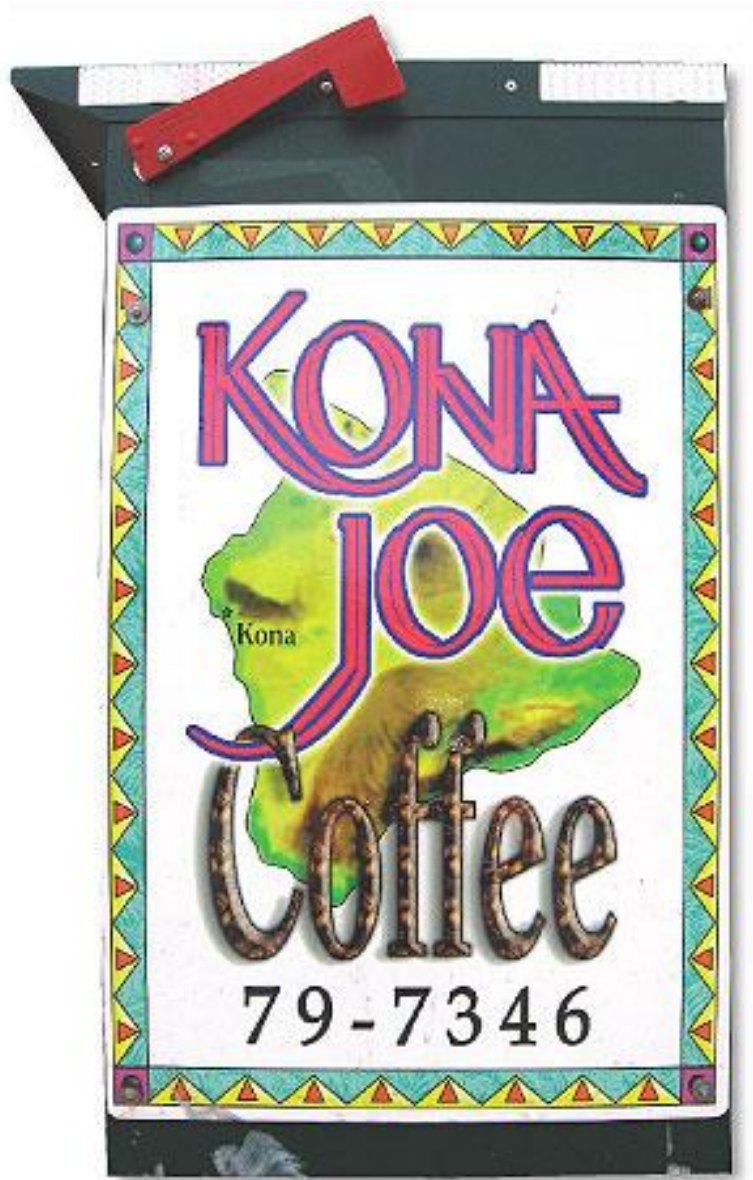


Big Island Weekly

Kona Joe

By Tiffany Edwards

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Kona Joe signage. - Tiffany Edwards



The Alban/Walsh property line. - Tiffany Edwards



Kona Joe goods for sale. - Tiffany Edwards

A neighbors' feud that has been brewing quietly for a few years is about to culminate with a judge's order prohibiting the Kainaliu-based Kona Joe from engaging in certain commercial activity on the coffee farm.

On April 2, Circuit Court judge Elizabeth Strance granted Gerald and Dorothy Walsh's motion for

partial judgment against Deepa and Joe Alban of the famed Kona Joe Coffee.

Imminent is Strance's order stating Kona Joe is illegally operating retail facilities on agricultural land. County and state law does not allow for a sales facility on land zoned for farming, only roadside stands.

"There are many, many operations affected by this ruling and I feel concerned that people really don't know what's going on," Joe Alban said of Strance's ruling.

The judge ruled Joe and Deepa Alban are in violation of the zoning code by selling their Kona Joe logo mug and logo T-shirts on their farm. They are also reportedly barred from allowing tour buses on their property.

In their civil case, the Walshes charge the Albans with 10 counts in all, from trespassing, to being a nuisance, to negligent and intentional infliction of emotional distress, libel and slander.

The Walshes claim the Albans wronged them with demand of \$2,000 a month for use of a one-way road they can rightfully use with an unrestricted easement. The couple also claims the Albans gave false testimony about them to the U.S. Department of Agriculture and to Hawai`i County Council members in 2005.

They also claim the Albans, either intentionally or unintentionally, tormented them.

"Beginning in approximately early 2005, defendants began harassing plaintiffs by, inter alia, placing flood lights that shine into plaintiffs' bedroom late at night, and directing music over loud speakers, including late at night, toward plaintiffs' property," the February 2006 first amended complaint states.

Joe Alban, of Orange County, Calif., paints an entirely different picture. He said he and his wife first bought their farm 12 years ago and, with his father's Central California vineyard in mind, started growing Kona coffee on trellises.

The Walshes bought property next to their farm several years back and it wasn't long before the neighboring couples clashed.

To Joe Alban, the Walshes liked the view of his farm, built as close to the operation as possible, and then, in 2004, started complaining that they didn't like the sounds, the lights and the fact that they were inviting the public onto the farm.

Joe Alban insisted he and his wife have made "numerous accommodations" for their neighbors. "None of it has made a difference because they feel it is inappropriate to be inviting the public to an agriculturally-known parcel. They're challenging everything we're doing -- from advertising to signage, to the open gate during the day, to selling something," he said.

Joe Alban described himself and his wife as "unsophisticated farmers, not legal experts." His farm has a gift shop and coffee kiosk overlooking the coffee trellises, and the luxury H-k-lia development further downslope.

"We have observed what others are doing. We're selling logo mugs along with the coffee we produce. We just thought that was a usual and customary practice for the community and there wasn't anything wrong with it," Joe Alban said. "There are farms all around. Many do the same thing."

Joe and Deepa Alban not only await the judge's order, but also a trial date set for early August.

The Walsh couple claims damages in excess of \$20,000. They referred comments about the case to their lawyer, Frank Jung.

Jung said he sees the importance of Strance's ruling to small farmers, particularly those who are trying to compete with larger, multi-faceted farms.

"There's a certain way of life here I think should be preserved," Jung said. "The zoning laws passed by the county permit those people to maintain that kind of lifestyle, and I think it's also important that those rights of the smaller farmers not be infringed upon in the age of development and growth. I think the court is protecting those rights," he said.

Jung suggested the court ruling shows a willingness to examine and enforce Hawai`i zoning codes.

"What the court is saying is, we know the county isn't enforcing the law so we will," he said.

Planning Director Chris Yuen said the county hasn't been involved in the Kona Joe/Walsh litigation, but takes this position regarding the state land use ag district:

"A bona fide coffee farm can sell their roasted coffee to visitors on-site, and give visitors free tours of the coffee farm and/or roasting facility," Yuen said. "A roasting facility, like the farm, is a permitted use, and sales of roasted or unroasted coffee are accessory to the farm."

According to Yuen, stuff like brewed coffee and T-shirts need a special permit.

"We understand that there are gray areas with respect to on-farm activities that are marketed to visitors," the planning director explained. "The county needs a better definition of what is and what isn't allowed, that must be established by ordinance."

Yuen maintains that some visitor sales and activities should be allowed as permitted uses.

"We understand that these can be a big help to keep ag economically viable but, at some level, these can have enough impact that they should have the greater scrutiny of a special permit," he said.

Yuen recalled his department pitched an ag tourism bill to council members in 2005, but Bill 148 is yet to be acted upon.

At an ag tourism conference In January 2007, Yuen suggested this framework for an ordinance:

1. Small-scale operations should be approved with a simple process like "plan approval."
2. Large-scale operations should require a special permit.
3. There must be some clear and objective means to differentiate between large-scale and small-scale.
4. It must be primarily a farming business, with enforceable criteria like ag products being the majority of revenue and/or minimum level of farm earnings.
5. The ordinance should cover access and hours of operation.
6. Weddings, thrill rides, B & Bs, and other activities not farm-focused, should require a special permit.

Meanwhile, area farmers are reacting to Judge Strance's ruling.

Carol Kawamoto attended a community meeting where the topic of discussion was "the growing problem County of Hawai`i is facing with the influx of mainlanders moving in to the islands buying up ag lands and expecting residential rights.

"Does this seem fair? Are we going to let Kona coffee die as we did sugar cane, orchids, pineapples etc., etc.? Take a look at Maui, Kauai and O`ahu. Haven't we learned anything? How can our legal system allow these selfish individuals (to) move in to ag lands and so bitterly complain about farming?" Kawamoto asked.

A coffee and mac nut farmer who only wanted to be identified as "Larry" said he was at a Lions' meeting talking with Joe Alban and Don Sasaki, of Cal-Kona Produce, who also lives off this Kainaliu one-lane road, hearing "about the troubles farms have keeping the farms in agriculture."

"I am in the same position as Kona Joe. We also have a 'fake farmer' or, as you would put it, gentleman farmer, next to us that is determined to limit our activities so they can have a residential setting. More and more of these fake farmers are moving in to farm lands (to) take advantage of ag tax cuts -- no farming of the land, demanding residential rights. The law seems to be supporting it."

"All our two-faced politicians say they care about farmers. That is the biggest b.s. Laws are more in favor of these land rapist(s) than the hard working farmer," Larry said.

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