

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Phoenix Construction  
Damage Prevention Enforcement

Case No. PU-15-166

AFFIDAVIT OF SERVICE BY REGULAR MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Geralyn R. Schmaltz** deposes and says that:

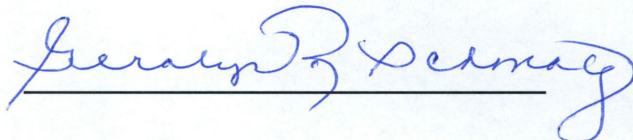
she is over the age of 18 years and not a party to this action and, on the **12th day of October, 2016**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed and each containing a photocopy of:

- **Complainant's Witness and Exhibit List**


The envelope was addressed as follows:

Doug Unruh  
Phoenix Construction  
PO Box 1871  
Bismarck, ND 58501

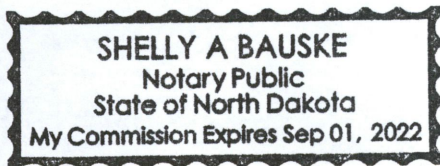
The address shown is the respective addressee's last reasonably ascertainable mailing address.

  
\_\_\_\_\_

Subscribed and sworn to before me  
this **12th day of October, 2016**.

  
\_\_\_\_\_  
Notary Public

SEAL



**BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA**

**Public Service Commission  
Phoenix Construction  
Damage Prevention Enforcement**

**Case No. PU-15-166**

\_\_\_\_\_)  
Public Service Commission, )  
Complainant, )  
vs. )  
Phoenix Construction, )  
Respondent. )  
\_\_\_\_\_)

**COMPLAINANT'S WITNESS AND EXHIBIT LIST**

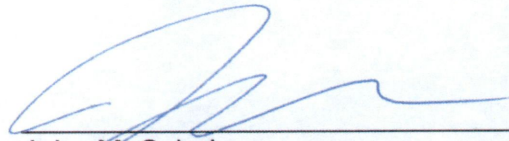
The Complainant submits this witness and exhibit list in advance of the October 18, 2016 hearing in this matter. Witnesses anticipated to be called at the hearing are Randy Meiers (building owner), Brad Wright (City of Bismarck, Engineer), Jeron Fueller (City of Bismarck Supervisor), and Victor Schock (PSC Advocacy Staff). Complainant reserves the right to call additional witnesses as the hearing may dictate.

The Complainant states that the following are exhibits that the Complainant expects to offer into evidence and use for the October 18, 2016 hearing. Complainant reserves the right to offer other exhibits as the evidence may dictate.

- PSC 1: Maps of address and picture of the building
- PSC 2: ND One Call Complaint
- PSC 3: Response from Phoenix Construction, Inc.

If there are any additional questions, please feel free to contact the North Dakota Public Service Commission.

Dated this 12<sup>th</sup> of October 2016



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John M. Schuh  
Special Assistant Attorney General  
600 East Boulevard  
12<sup>th</sup> Floor – North Dakota State Capitol  
Bismarck, ND 58501  
jschuh@nd.gov  
(701) 328-2421

Google Maps 113 S Bell St

EXHIBIT  
PSC 1

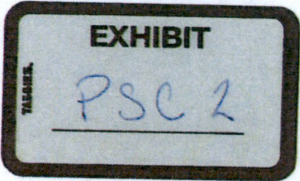


Imagery ©2016 Google, Map data ©2016 Google 20 ft



Sporting Goods • Musical  
Instruments • Books • Records • Cass  
• VHS • DVD • Video • CDs • Cassettes  
• Books • Games • Collectibles

Bell Pawn  
& Collectibles



**ND ONE-CALL COMPLAINT**

Public Service Commission

SFN 59067 (1-14)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

**PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)**

Company/Person City of Bismarck Public Works/ Keith Demke	Street Address Po Box 5503	City Bismarck	State and Zip Code ND 58506-5503
Telephone and Cell Phone Number 701-355-1704 701-220-5059	Email Address kdemke@bismarcknd.gov	Date April 24, 2015	
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

**PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)**

Company/Person Phoenix Construction/ Doug Urruh	Street Address 4620 Sky Way	City Bismarck	State and Zip Code ND 58501
Telephone and Cell Phone Number 701-222-1416	Email Address		

**PART C – ALLEGED VIOLATION**

Operator failed to provide or update the information provided to the notification center on a timely basis

Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation

Excavator failed to provide required information in excavation or location notice

Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation

Notification center failed to inform the excavator of the names of operators of underground facilities in the area

Operator failed to locate and mark underground facility within 48 hours

Excavation started prior to underground facility locate

Operator failed to mark underground facility within 24 inches horizontally

Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period

Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities

Excavator failed to maintain the markings during excavation

Other (identify the specific section of NDCC Chapter 49-23) 49-23-06 Excavator failed to provide notice of damage, backfilled without notice or repair

Location of Violation:  
133 S. Bell Street, Bismarck

Date and Time of Violation:  
Uncertain - late November-early December 2014

Description (summarize the observations on which you rely to allege the violation) *If more space is required, please provide the description on a separate page.*

Recently, we noticed that a 36-inch diameter storm sewer was not draining and appeared to be plugged. On April 21, 2015 using televising equipment we determined that the pipe was collapsed and filled with dirt at the location where Phoenix Construction built an addition onto the structure at 133 S. Bell Street. We were not notified by ND One Call to provide utility location information at the time this work was done. According to the building owner, when the contractor was excavating for the building foundation he hit something at this location. He pulled out pieces of vitrified clay pipe and then backfilled.

**PART D – DAMAGE**

Fatalities na	Injuries na	In-patient Hospitalization na
Underground facility type(s) and Operator(s) affected: Collapsed 36 inch diameter storm sewer		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ Not determined at this time	Number of Customers Affected See below	
Other impact of event: The collapsed sewer presents a flooding risk to residents and businesses upstream who rely on this drainage system to convey storm water run off. No customers have been affected to date, however the potential exists for flooding in this neighborhood in case of heavy rainfall. This main also serves as an emergency bypass for sewage. While it's use is rare, if it were to be needed and is unusable, the result would be basements flooding with backed up sewage.		
Please attach photos of Event Area or Damaged Facility		

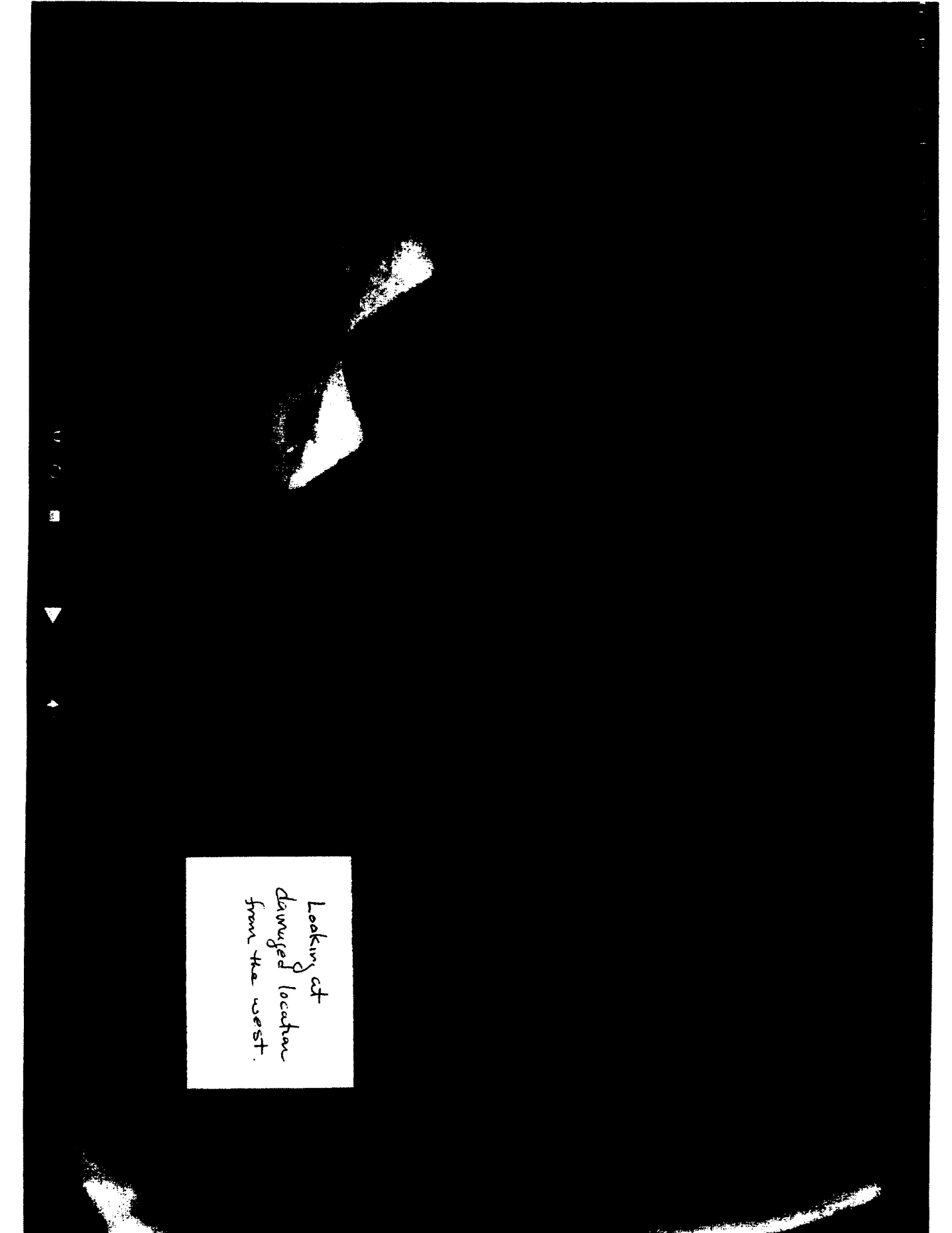
**PART I – SIGNATURE**

Signature of Person Filing Complaint <i>Keith Demke</i>	Date 4/24/2015
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Send Completed, Original Complaint To:  
Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480  
Telephone: (701) 328-2400

*Director of Utility Operations  
City of Bismarck*





Looking at  
damaged location  
from the west.

EXHIBIT  
PSC 3



**PHOENIX CONSTRUCTION, INC**  
P.O. BOX 1871  
BISMARCK, ND 58502-1871  
(701) 222-1416

RECEIVED  
MAR 28 2016  
NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
VS  
Phoenix Construction

March 24, 2016

Case No  
PU-15-166

Doug Unruh (DBA Phoenix Const.) Answer to Complaint.

I can not afford an attorney to answer this complaint so I hope this will be a sufficient answer. I will admit we did not call One-Call to locate, all I can offer is the reason we did not. In talking with the owner he said a few years back he had the property located and since he knew where the water and sewer were located and the power lines were over head and we were not going close to lot lines. We made a bad decision to start excavating.

Since there was a lot of rubble buried in the excavation we did not know we had hit any kind of pipe so we did not knowingly bury the pipe back up.

The owner has held back \$38,000.00 and this has caused financial hardship.

If the penalty is imposed on Phoenix Construction it would push me over the edge and I would have no option but to file bankruptcy.