

The Calculation of Disturbance Damages Arising from Partial Takings

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Disturbance Damages

".. as economic loss suffered by an owner by reason of having to vacate expropriated property."

Todd

"... the seller cannot put in his pocket more than the net market value".

Lord Justice Scott

Damages Include

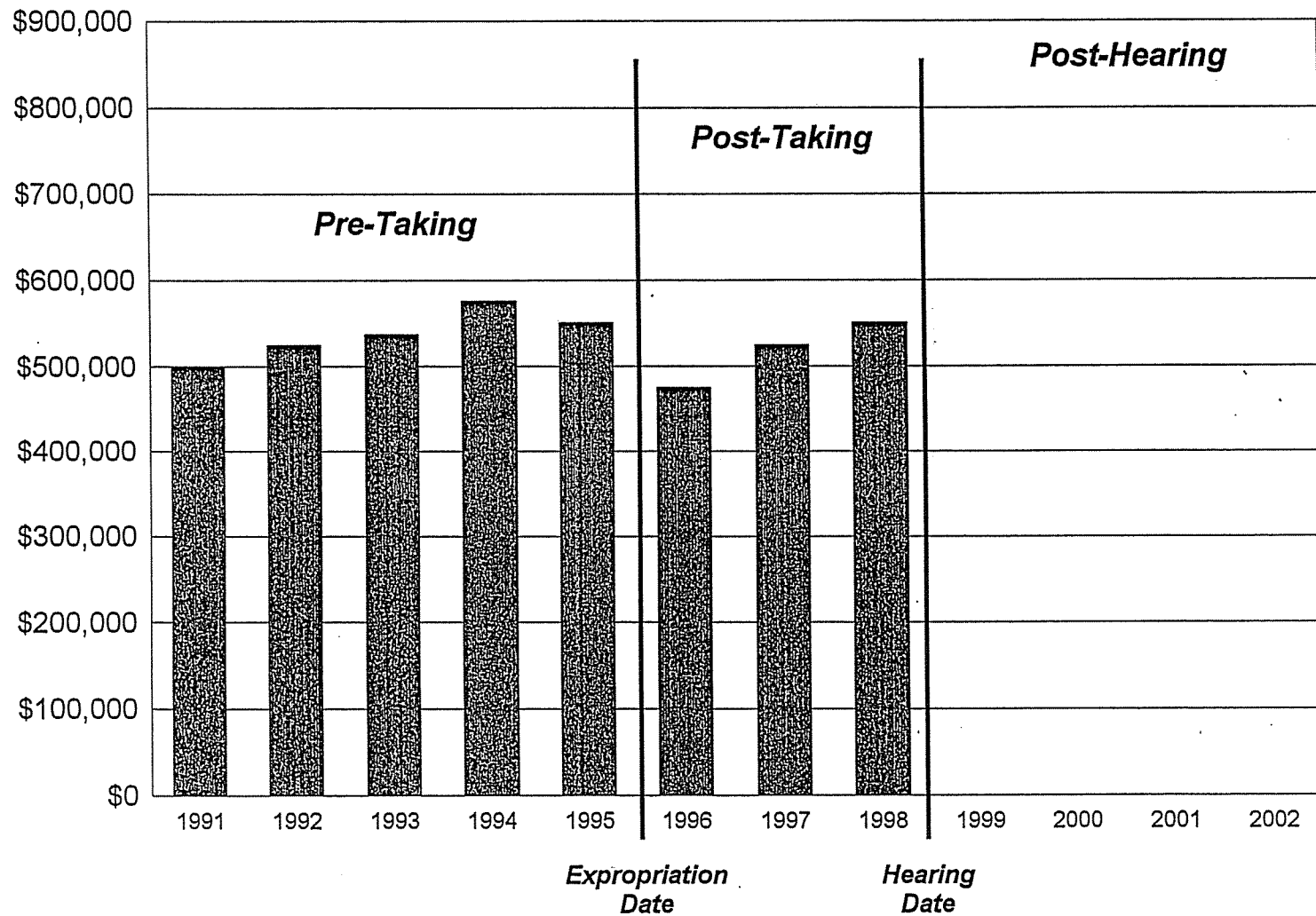
- ☞ Payment for land taken
- ☞ Consideration of land improvements
- ☞ Loss of earning suffered
- ☞ Loss of future earning power
damages . .
. . .or goodwill.

Three Stages of Disturbance Damages

1. Pre-expropriation damages
2. Damages from expropriation to hearing
3. Damages subsequent to hearing

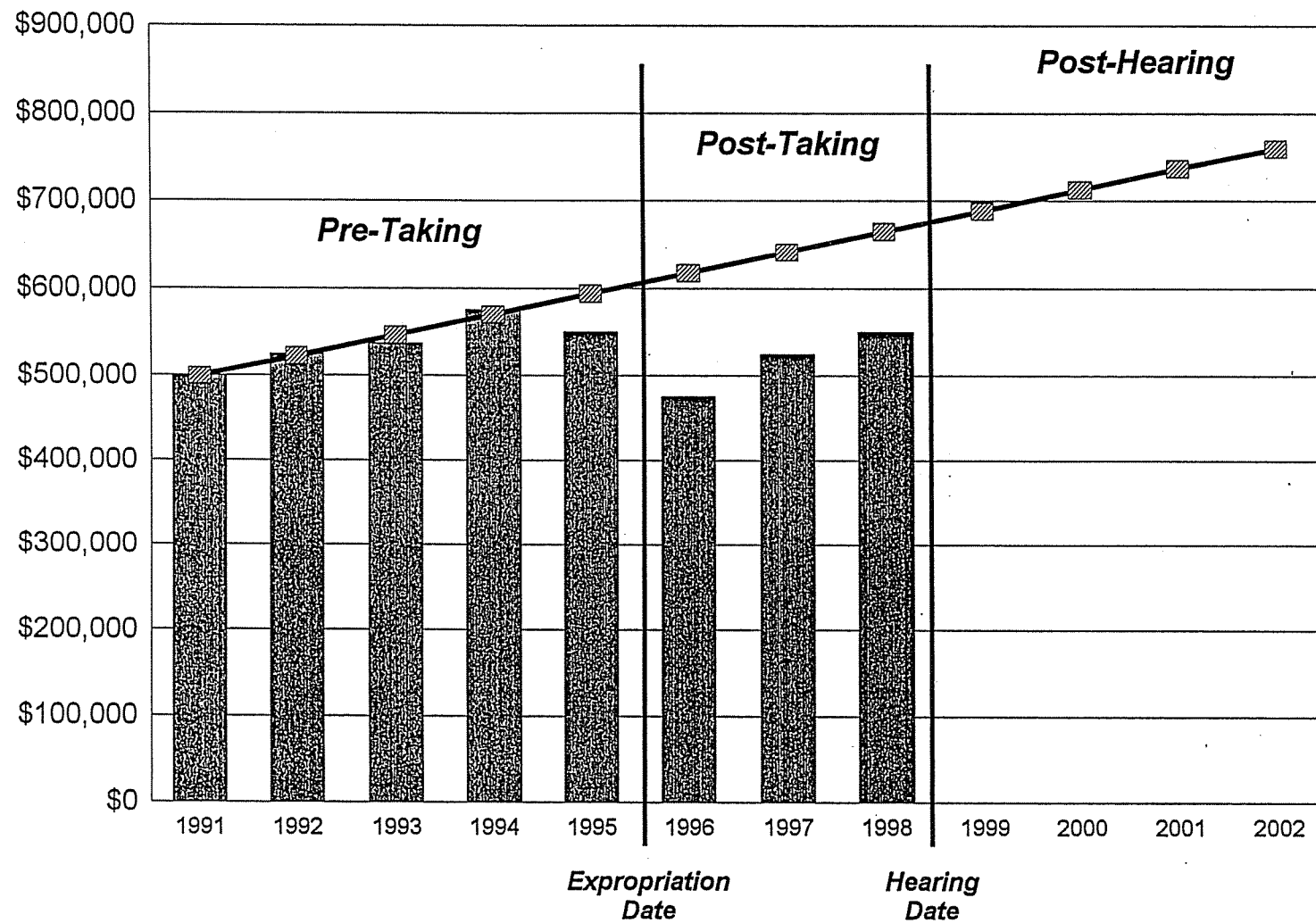
ABC Distributors

Annual Pretax Earnings



ABC Distributors

Annual Pretax Earnings



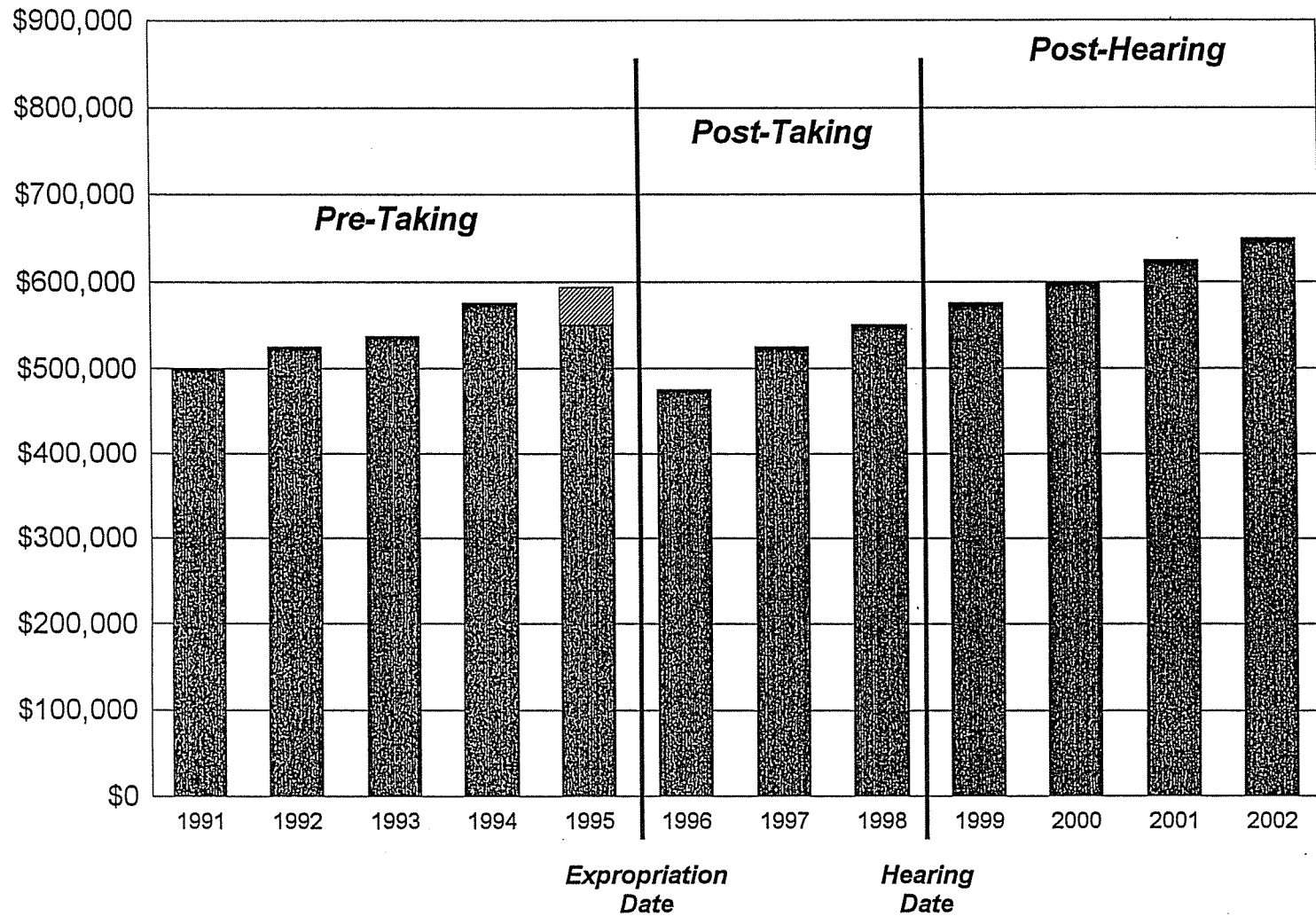
1.

Pre-Expropriation Damages

- ☞ Damages must relate to the upcoming expropriation
- ☞ Mitigation required

ABC Distributors

Annual Pretax Earnings



Loss of Income

	(\$000's)		
	<u>Actual</u>	<u>Normal</u>	<u>Difference</u>
Sales	\$3,000	\$4,000	\$1,000
Cost of Sales	<u>2,250</u>	<u>3,000</u>	<u>750</u>
Gross Profit	750	1,000	250
Variable Costs	<u>75</u>	<u>100</u>	<u>25</u>
Marginal Contribution	675	900	225
Fixed Costs	<u>100</u>	<u>100</u>	<u>-</u>
Pre-Tax Earnings	<u>\$575</u>	<u>\$800</u>	<u>\$225</u>

2.

Damages from Taking to Hearing

Objective

- ▶ to replace loss of earnings and reduction in values resulting from the partial taking

2.

Damages from Taking to Hearing

Considerations:

- ▶ changes in remaining land values
- ▶ changes in business results
- ▶ could include one or both;
 1. Loss of cash flow
 2. Goodwill reduction - partial loss of capital asset

Includes both short-term temporary cash losses and longer term permanent cash losses

2. Damages from Taking to Hearing

Should increases in value be considered?

Possibilities:

1. Ignore Increases?
2. Offset against property taken?
3. Offset only against damages on remaining land

2.

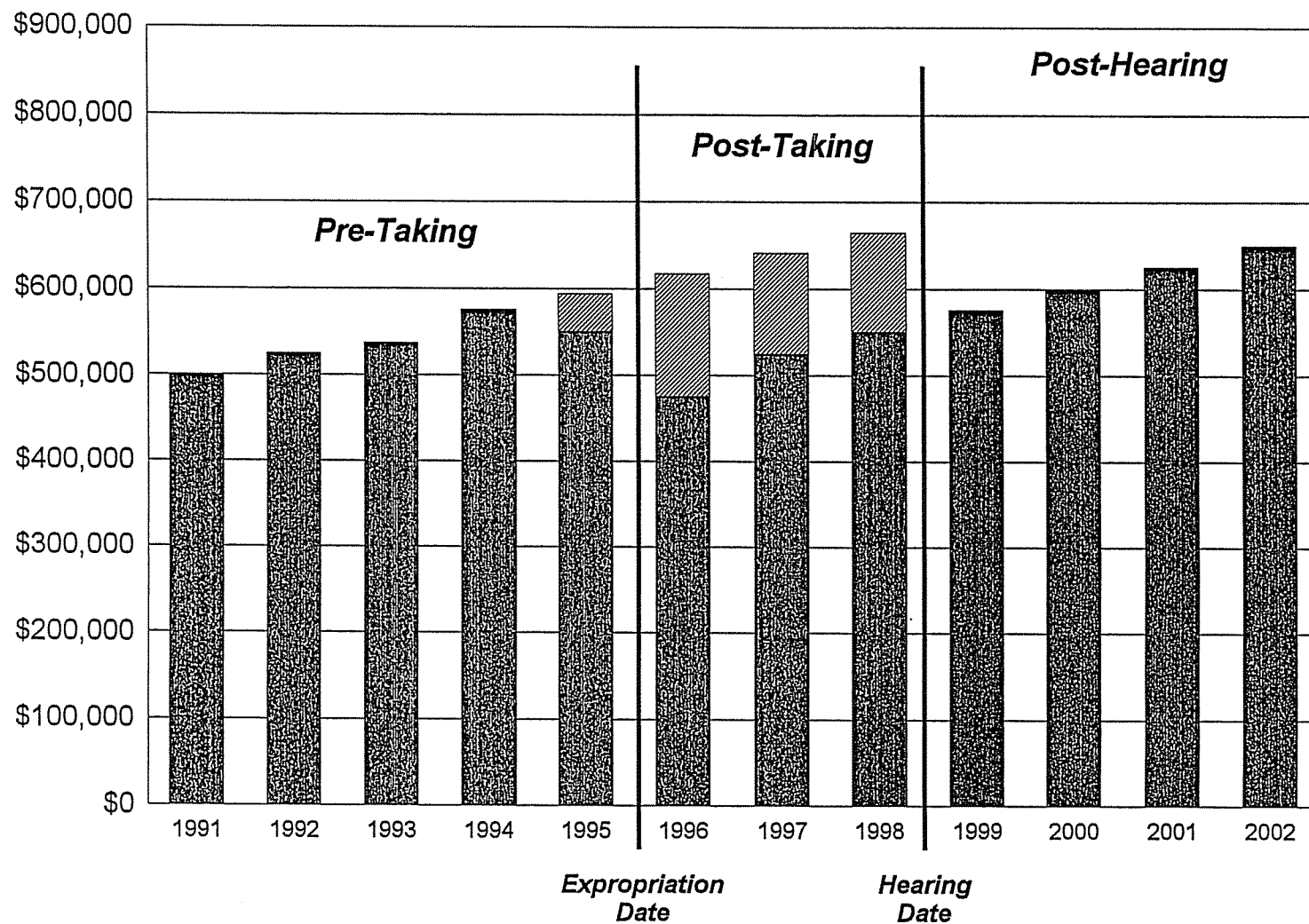
Damages from Taking to Hearing

B.C. Expropriation Act - Section 44

" ... there must be deducted from the amount of compensation payable to that owner the estimated amount of the benefit."

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Annual Pretax Earnings

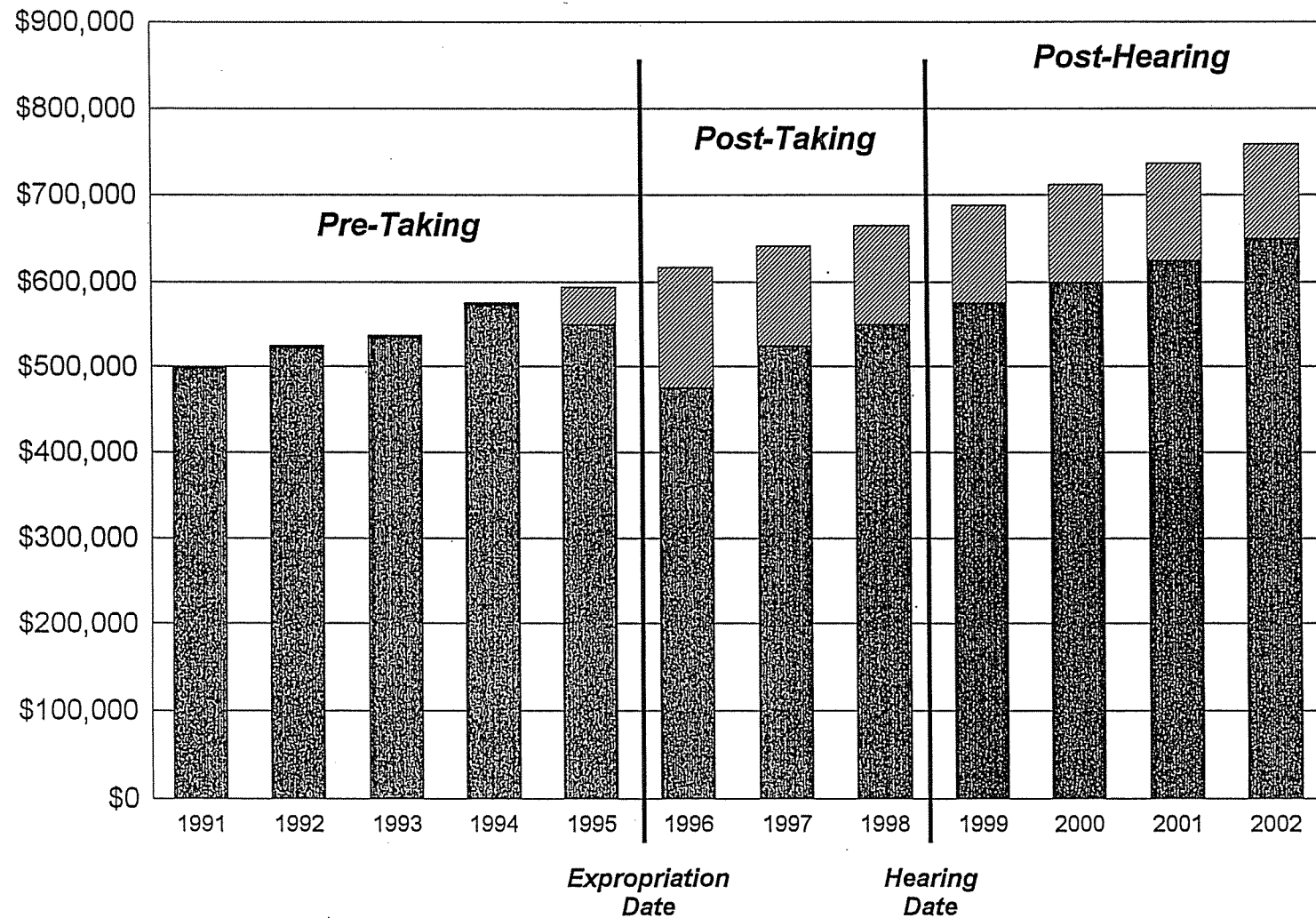


3. Damages Subsequent to Hearing

- ☞ could include future damages and/or loss of goodwill
- ☞ difficulty of qualifying future events
- ☞ What is the best method?
 - ▶ Loss of earnings
 - ▶ Loss of goodwill
 - ▶ Both

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Annual Pretax Earnings



Differences Between Loss of Income and Goodwill in a Partial Taking

Loss of Income

The net marginal cash losses suffered as a direct result of the taking.

Goodwill Lost

The permanent reduction in goodwill, a capital asset, as a direct result of the taking.

Goodwill vs. Loss of Income

GOODWILL:

- ☞ Goodwill tends to market-driven
- ☞ Goodwill comparables may be available
- ☞ Some business don't have goodwill
- ☞ Loss of goodwill occurs only if there is a permanent decline of earning power

Goodwill vs. Loss of Earnings

LOSS OF INCOME

- ➡ Loss of earnings directly attempts to make owner whole
- ➡ Loss of earnings relates to a specific time period
- ➡ Loss of earnings is usually more speculative, thus more difficult to do
- ➡ Loss of earnings method is generally more imprecise

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Loss of Goodwill

	<u>Actual</u>	<u>Normal</u>	<u>Difference</u>
Earnings	\$400	\$600	\$200
Price Earnings Multiple	<u>x 4.0</u>	<u>x 3.5</u>	
	1600	2100	500
Tangible Assets	<u>1,000</u>	<u>1,000</u>	<u>-</u>
Goodwill	<u>\$600</u>	<u>\$1,100</u>	<u>\$500</u>

Other Issues

- ☞ Compensation of management/owners time
 - should be paid in most instances

- ☞ Could damages from a partial taking exceed the cost of a total take?

Could happen ... but although generally used, goodwill may not fairly compensate for damages